

716

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

-----x 21-CR-483 (ENV)

3 UNITED STATES OF AMERICA,

4 Plaintiff, United States Courthouse
Brooklyn, New York

5 -against-

November 17, 2022
10:00 a.m.

6 CHRIS BANTIS,

7 Defendant.

8 -----x
9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE ERIC N. VITALIANO
UNITED STATES SENIOR DISTRICT JUDGE
BEFORE A JURY

11
12 APPEARANCES

13 For the Government: UNITED STATES ATTORNEY'S OFFICE
14 Eastern District of New York
271 Cadman Plaza East
15 Brooklyn, New York 11201
BY: LINDSEY OKEN, ESQ.
16 TARA BRIGIT McGRATH, ESQ.
JENNIFER M. SASSO, ESQ.
17 Assistant United States Attorneys

18 For the Defendant: FEDERAL DEFENDERS OF NEW YORK
One Pierrepont Plaza
19 Brooklyn, New York 11201
BY: NORA K. HIROZAWA, ESQ.
MARISSA SHERMAN, ESQ.

20 Also Present: EMILY MOOSHER, PARALEGAL
CAROLINE KISSICK, PARALEGAL
PAUL TAMBRINO, AGENT

21 Court Reporter: LINDA D. DANIELCZYK, RPR, CSR, CCR
Phone: 718-613-2330
22 Fax: 718-804-2712
Email: LindaDan226@gmail.com

23 Proceedings recorded by mechanical stenography. Transcript
24 produced by computer-aided transcription.

PROCEEDINGS

717

1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise.

3 (Defendant enters the courtroom.)

4 THE COURTROOM DEPUTY: Court is now open.

5 The Honorable Eric N. Vitaliano presiding.

6 Case on calendar is U.S.A. versus Chris Bantis.

7 Case Number 21-CR-483 on for jury trial -- charge conference
8 and jury trial.

9 Would the attorneys please note their appearance,
10 beginning with government counsel.

11 MS. OKEN: Good morning, Your Honor. Lindsey Oken
12 Tara McGrath and Jennifer Sasso on behalf of the United
13 States. And we're joined by paralegal specialist Emily
14 Moosher.

15 THE COURT: And good morning, all.

16 MS. HIROZAWA: Good morning, Your Honor. Nora
17 Hirozawa and Marissa Sherman, Federal Defenders, on behalf of
18 Chris Bantis. And we're joined at counsel table by our
19 paralegal Caroline Kissick.

20 THE COURT: And good morning to you all. And
21 Mr. Bantis.

22 THE COURTROOM DEPUTY: Counsel for both sides are
23 present, including the defendant.

24 THE COURT: And good morning again.

25 We have two items to address in this session of the

PROCEEDINGS

718

1 trial, since we're blocking out the whole day.

2 One is the principal focus will be on the charge
3 conference, the second is the allocution of Mr. Bantis with
4 respect to taking the stand.

5 Does the defense have a -- you rather do that first?

6 MS. SHERMAN: He is prepared for the allocution,
7 Judge, thank you.

8 THE COURT: Okay.

9 Now, Mr. Bantis, as your counsel and lawyers have
10 advised me that it is your plan not to take the stand, and
11 this allocution is really designed to assure me that that's a
12 decision that ultimately you have made.

13 So have you had a full and fair opportunity to
14 discuss that issue with your lawyers?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And you understand that you have the
17 absolute right to take the stand and testify in your own
18 defense?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And you have the absolute right to
21 remain silent, and if you chose that right, which is
22 apparently what your lawyers have told me you have chosen, I
23 will instruct the jury that they cannot hold your silence
24 against you.

25 You understand that?

PROCEEDINGS

719

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And have you made a personal decision as
3 to what you wish to do?

4 THE DEFENDANT: Yes, I have, Your Honor.

5 THE COURT: And what is that decision?

6 THE DEFENDANT: I wish to remain silent.

7 THE COURT: And no one's threatened you or forced
8 you to take that position?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: The Court finds the defendant
11 voluntarily and knowingly determined that he wishes to remain
12 silent, and the Court will instruct the jury that they cannot
13 hold his failure to take the stand against him in any way.

14 Okay. So let us now, if there is not any other
15 housekeeping beforehand, we'll turn to the charge.

16 Any housekeeping, other than the charge conference,
17 that we should turn to?

18 Ms. Oken?

19 MS. OKEN: Not from the government, Your Honor.

20 THE COURT: Ms. Hirozawa.

21 MS. HIROZAWA: Not from the defense.

22 THE COURT: Okay. So, therefore, as I indicated
23 yesterday, we have killed about two trees, but we have, in
24 fact, created a proposed charge and a verdict sheet.

25 The proposed charge has been marked as Court's

CHARGE CONFERENCE

720

1 Exhibit 1. The proposed verdict sheet has been marked as
2 Court's Exhibit 1A.

3 (Court Exhibits 1 and 1A, were received in
4 evidence.)

5 THE COURT: And the way we do this is without
6 ceremony or status or what side of the room you're on. We go
7 through the proposed charge front to back. And we turn to the
8 page, the lowest numbered page that I decide may have an
9 objection or an exception.

10 So I'll ask Ms. Oken first: What page is your
11 earliest objection or exception on?

12 MS. OKEN: Page 18, Your Honor.

13 THE COURT: And, Ms. Hirozawa, do have anything
14 between 1 and 18?

15 MS. SHERMAN: Hi, Judge Vitaliano, this is Marissa
16 Sherman. I'm going to handle the charge conference.

17 Give me one second. I don't have many comments, so.

18 Yes, page 15.

19 THE COURT: You win.

20 We'll start at page 15.

21 Tell us what you think.

22 MS. SHERMAN: Well, Judge, assuming that I'm able to
23 reel Officer Selwanes in, we would just ask that when the
24 sentence ends, "He need not submit any evidence at all,"
25 period, that another sentence is added that said: Even if the

CHARGE CONFERENCE

721

1 defendant has submitted evidence, as he did during this trial,
2 the burden of proof never shifts to the defendant, it always
3 stays with the government.

4 THE COURT: The government have any problem with
5 that?

6 MS. OKEN: I don't think so, Your Honor. Or perhaps
7 the sentence proceeding it which says, "The burden never
8 shifts for the defendant," there could be an added clause that
9 says: Even if defense choses to present evidence.

10 But as a concept, we do not have any issue with
11 that.

12 THE COURT: You want to amend that that way?

13 MS. SHERMAN: We would prefer it the way that we
14 proposed but...

15 THE COURT: I'm just asking.

16 MS. SHERMAN: Yes.

17 THE COURT: If we amend it, it doesn't really
18 matter.

19 MS. SHERMAN: Right.

20 MS. OKEN: We have no objection to that.

21 THE COURT: That's fine?

22 MS. SHERMAN: I can provide -- I typed it into -- I
23 don't know if Scott would like that, but I typed it into the
24 document itself.

25 THE COURT: Whatever is easier for you, Scott.

CHARGE CONFERENCE

722

1 All right so.

2 MS. SHERMAN: And, Judge, I also have one on
3 page 17. It's just an added line as to the reasonable doubt.

4 The line that ends with, "Bear in mind that a
5 criminal case is different from a civil case," period. We
6 would propose the following language: It is not sufficient to
7 prove that the defendant is probably guilty. In a criminal
8 case, the proof of guilt must be stronger than that, it must
9 be beyond a reasonable doubt.

10 MS. OKEN: Your Honor, I think on that one we would
11 suggest that ingesting language that pertains to a different
12 standard will just cause confusion and that the Court's
13 reasonable doubt instruction is reasonable.

14 THE COURT: Yes, I'm not going to make that change.

15 Which bring us to the next page, which is you,
16 Ms. Oken.

17 MS. OKEN: Yes, Your Honor.

18 With respect to the First Amendment language in
19 here, we don't think the First Amendment has been raised or
20 implicated at all. It's certainly not implicated by the fact
21 that this case which involves, among other things, threats of
22 death, so I think our proposal would be to strike the
23 First Amendment language from the charge.

24 THE COURT: Scott will correct me if I'm wrong, but
25 is this, Scott, the language we got from Judge Chen or not?

CHARGE CONFERENCE

723

1 THE LAW CLERK: That's right.

2 THE COURT: So this is language that Judge Chen has
3 used?

4 MS. OKEN: It is, Your Honor. And I think that case
5 was quite different, insofar as number one, there were no
6 threats of death in that case; and number two, it involved
7 posting a video to YouTube, which I think implicates more
8 First Amendment issues.

9 There was also in that case litigation pertaining to
10 the First Amendment, which has been absent from the record in
11 this case.

12 THE COURT: But not before the jury, I assume.

13 MS. OKEN: There was litigation advanced prior to
14 trial regarding the First Amendment, that's correct, Your
15 Honor. We don't think First Amendment issues are implicated
16 here. We've noted that in our letter objection. We do
17 understand that this is language that Your Honor has received
18 from instructions used by Judge Chen.

19 THE COURT: I don't -- Ms. Sherman --

20 MS. SHERMAN: Yes.

21 THE COURT: -- what's your view?

22 MS. SHERMAN: We did request this charge, and in
23 part based on we looked at the charge in the *Hillard* case. We
24 believe that -- the charge is pretty clear that the first --
25 that the government is still able to protect a witness from

CHARGE CONFERENCE

724

1 retaliation. And all this is saying that is -- and, in fact,
2 it says, "Where the government proves beyond a reasonable
3 doubt the speaker's intent to retaliate," and that is what
4 they have to prove. So whether it's a threat of death or not,
5 if they believe there was a threat of death and that it was
6 intended to retaliate, then the First Amendment's not going to
7 apply.

8 THE COURT: Yes, I thought it was -- I haven't seen
9 it before last night, but I think it's -- of course, this kind
10 of case is not exactly run of the mill, it does happen from
11 time to time, but it seemed like a -- in the sense that it's a
12 case where language can be the means of the individual crime,
13 I thought it was fairly balanced.

14 So I'm going to leave it in and overrule the
15 government's objection, particularly since it has been used in
16 similar cases in this courthouse.

17 MS. OKEN: Understood, Your Honor.

18 Our next comment was not until page 69.

19 THE COURT: Ms. Sherman, do you have anything
20 between page 18 and page 69?

21 MS. SHERMAN: I believe so, which is my only
22 outstanding comment on the jury charge. Just wait one second
23 here.

24 If I look at the table of contents, I'll get there a
25 lot quicker.

CHARGE CONFERENCE

725

1 No, not before page 69.

2 THE COURT: Okay.

3 And what is on page 69?

4 MS. OKEN: So our comment was quite minor on
5 page 69, and it's just that the sort of heading here,
6 "Count One, Witness Retaliation" be moved below that sort of
7 first paragraph.

8 Primarily because the first paragraph reads, it's
9 sort of a general description of the allegations then it says,
10 "That the defendant is charged with retaliating," yada, yada,
11 yada, "including by threatening John Doe 1 and John Doe 2's
12 family members," Jessie Harrison and Andrew Harrison.

13 It is sort of inclusive, meaning this doesn't
14 purport to describe all of the ways in which they're alleged
15 to do that.

16 But we would just suggest moving the heading down so
17 as not to suggest that this is sort of the sole definition of
18 witness retaliation.

19 THE COURT: And its location, can you show Scott?

20 MS. OKEN: I can.

21 MS. SHERMAN: And Ms. Sherman.

22 MS. OKEN: I can.

23 THE COURT: You know, particularly since we're
24 changing words there. I'm not married to the format.

25 MS. OKEN: Understood. It would go after the first

CHARGE CONFERENCE

726

1 sentence which ends, quote, "Victim 1 and Victim 2," and then
2 it would be moved down, and then the next portion would begin:
3 "The indictment reads".

4 THE COURT: So you're creating more space; is that
5 what you're saying?

6 MS. OKEN: Essentially. Move the heading down after
7 the sort of general description of the case so as not to
8 suggest that that summary is a summary that is derived
9 necessarily from the exact statutory language or the exact
10 allegations.

11 THE COURT: Do you have any problem with that,
12 Ms. Sherman?

13 MS. SHERMAN: No, Your Honor.

14 THE COURT: All right. So, Lindsey, go show Scott
15 where you want it so he knows exactly where.

16 MS. OKEN: So I think that just leaves the
17 government's comments left. We do have a few, but I think
18 they are relatively minor.

19 The first is on pages 72 to 73.

20 THE COURT: Ms. Sherman, do you have anything?

21 MS. SHERMAN: No.

22 THE COURT: Okay, 72 and 73.

23 MS. OKEN: And this is where the Court advises the
24 jury of sort of different alternative ways that they may, if
25 they find unanimously, reach a guilty verdict.

CHARGE CONFERENCE

727

1 And we would just suggest in the last clause, so the
2 charge reads, "You must agree unanimously on which witness the
3 defendant intended to retaliate against. In other words, in
4 order to find the defendant guilty, you must unanimously find
5 that the defendant intended to retaliate against George
6 Harrison or you must unanimously find the defendant intended
7 to retaliate against James Harrison."

8 And for the third clause we would suggest that the
9 "must" be converted into a "may" in order to sort of
10 clarify --

11 THE COURT: I'm not really thrilled with that
12 language there. I put it in there more as a placeholder. And
13 I will recommend this now and let counsel comment, strike
14 everything out from "in other words" on.

15 MS. OKEN: I think we do think that illustrative
16 list is helpful. And again, Your Honor, I think this would
17 make a lot more sense to the jury once they see the verdict
18 sheet.

19 THE COURT: Right, that's why I didn't think it
20 needed it. That's exactly why I didn't think it needed it,
21 Ms. Oken.

22 MS. OKEN: Sure.

23 MS. SHERMAN: Judge, while Ms. Oken is looking over,
24 the defense's position is we agree that I think after -- we
25 don't need the words -- anything after "in other words," I

CHARGE CONFERENCE

728

1 think we can strike that language. I think it's pretty clear.

2 THE COURT: Yes, it's pretty redundant, and I think
3 sometimes less is more.

4 MS. OKEN: We see Your Honor's point, although we --
5 yes, I think we do sort of like the concept of at least
6 previewing for the jury, if not the substance of the verdict
7 form, maybe that there will be a verdict form that will
8 specify their options, something like that.

9 THE COURT: And I think it's all in harmony, and I'm
10 going to strike it out.

11 MS. OKEN: Okay. Thank you, Your Honor.

12 THE COURT: And I think it will be short and clear
13 because as you can see, I've opted with the first verdict
14 form, to the extent I think that's clearer.

15 MS. OKEN: I think, not to harp on this point but,
16 Your Honor, I think we would suggest that that first sentence
17 then, to the extent everything else after is going to be
18 struck, we would suggest that there at least be some
19 indication that they must unanimously agree on which -- or
20 some suggestion that it could be both.

21 THE COURT: I think that's in there.

22 MS. OKEN: It's in the prior, okay, Your Honor.

23 THE COURT: I think it's clear enough.

24 MS. OKEN: Yes. I think that's right, Your Honor.
25 Okay, we're good with that. Thank you.

CHARGE CONFERENCE

729

1 MS. SHERMAN: Just to double check on that, Judge.
2 So what's getting struck is that paragraph where it says,
3 "Similarly," we're keeping that language, right?

4 THE COURT: Yes, everything from "in other words"
5 on. Everything before what was added stays.

6 MS. SHERMAN: Okay. So but when you say "everything
7 on," I just want to make sure I understand where it's ending.
8 What's being taken out.

9 THE COURT: It begins at "in other words".

10 MS. SHERMAN: Right.

11 THE COURT: And it ends at the end of that
12 particular jargon.

13 MS. OKEN: I think --

14 MS. SHERMAN: Right, I think the only suggestion is
15 it ends at -- you know, "Find the defendant intended to
16 retaliate," period. Because the next part of that same charge
17 is that they also have to unanimously find which victim he
18 intentionally threatened, and I think that we still want in.

19 So that's part of the same charge, so.

20 THE COURT: Yes, it's -- what I mean is that the "in
21 other words" language that was added, right --

22 MS. SHERMAN: Right.

23 THE COURT: I know what it looked like before it was
24 added, the rest of that was in.

25 But, Scott, why don't you read --

CHARGE CONFERENCE

730

1 MS. SHERMAN: Oh, I see, I see.

2 THE COURT: -- read out loud the language. He and I
3 discussed this already. Read out loud the language that would
4 come out. Everything else would stay.

5 THE LAW CLERK: In other words, to find the
6 defendant guilty, you must unanimously find that the defendant
7 intended to retaliate against George Harrison, or you must
8 unanimously find that the defendant intended to retaliate
9 against James Harrison, or you must unanimously find that the
10 defendant intended to retaliate against both.

11 THE COURT: Everything else stays.

12 MS. OKEN: And I think that "in other words"
13 language repeats itself in the next paragraph. So the
14 following the "similarly" sentence. "Similarly, although the
15 indictment charges," then the following. It says, "Once,
16 again, you must agree unanimously," and then there is the "in
17 other words" clause would come out there as well.

18 THE COURT: Yes. Same language comes out.

19 MS. OKEN: Although, I apologize for sort of clawing
20 that back just a tiny bit, because that paragraph refers not
21 just to harm to a victim, it also refers to property damage.
22 And so I don't know that leaving it at which victim the
23 defendant intended to threaten would fully encapsulate that
24 they could find based on a threat to Jessie Harrison, a threat
25 to Andrew Harrison, a threat to both, a threat to property or

CHARGE CONFERENCE

731

1 a threat to property damage.

2 THE COURT: Let me ask Scott.

3 There was second language added there as well?

4 THE LAW CLERK: The only language added was the "in
5 other words" language.

6 THE COURT: That one time?

7 THE LAW CLERK: Both times.

8 So this paragraph also ended with the "in other
9 words" clause.

10 THE COURT: So when you take that out, it is the way
11 I initially viewed it?

12 THE LAW CLERK: Yes.

13 THE COURT: It's clear enough.

14 Your exception, Ms. Oken, it's clear enough.

15 MS. OKEN: Understood. Thank you, Your Honor.

16 THE COURT: Okay, so we're at 72, 73.

17 And next lowest number?

18 MS. OKEN: My next on is very minor, but on page 81.

19 MS. SHERMAN: Judge, we have one before that, yes.

20 Judge, it says to the statutory purpose charge. We
21 did, in our papers, object to this charge, and I would point
22 out that that charge was not given by Judge Chen in the
23 *Hillard* case. It's our contention that witness retaliation is
24 not a controversial law. I think unlike, for example, maybe
25 possession of a gun --

CHARGE CONFERENCE

732

1 THE COURT: Let me stop you.

2 MS. SHERMAN: Sure.

3 THE COURT: Ms. Oken, was that charge not given by
4 Judge Chen?

5 MS. OKEN: It was not requested in that case, Your
6 Honor, and, therefore, not given.

7 THE COURT: Here's the problem I have, Ms. Sherman.
8 I normally adhere to *Sand*. Do I particularly like it, though?
9 Not frankly. But it's in *Sand*. And I usually adhere to
10 what's in the *Sand* charge.

11 MS. SHERMAN: I understand that. I saw the *Sand*
12 charge, we tried to find cases where it was given and,
13 frankly, couldn't, so...

14 THE COURT: You mean you couldn't find it in a place
15 where it was actually given.

16 MS. SHERMAN: I could not locate a case where this
17 charge was given. I understand that it's in *Sand*, but...

18 THE COURT: How about you, Ms. Oken? Do you know if
19 it's been given anywhere?

20 MS. OKEN: I'd have to refer back to our notes on
21 that, Your Honor.

22 We do think, though, that given that it is in *Sand*
23 and we think it is sort of an important corollary to the
24 First Amendment charge, we do think that it makes sense to
25 keep it here.

CHARGE CONFERENCE

733

1 THE COURT: Well, you know, as I said to Scott last
2 night, the only thing is -- as far as I'm concerned, the only
3 think that it's got going for it is that it's in *Sand*. I am
4 concerned by Ms. Sherman's research which shows that no one
5 has given it. So, you know, it's sort of like the
6 independence.

7 My personal predilection is that we don't get it.
8 Here's what we'll do. If you can -- we'll give Ms. Oken a
9 chance to have some -- someone do some quick research, see if
10 anybody can find it, if it was actually given by someone in a
11 case, and then we'll reassess it; but if not, we'll take it
12 out.

13 MS. OKEN: We'll take a look. Thank you, Your
14 Honor.

15 MS. SHERMAN: Thank you, Judge.

16 THE COURT: Okay. What's next?

17 MS. OKEN: My next is a minor thing on 81.

18 THE COURT: Anything before 81, Ms. Sherman?

19 MS. SHERMAN: No, Judge. And I actually don't think
20 we have any other, just so you're aware.

21 THE COURT: All right, 81.

22 MS. OKEN: Under -- on the second to the last line
23 under a third clause, we might propose changing the "their" to
24 "his". So that sentence would read: "To retaliate against a
25 witness for his attendance or testimony," only because there's

CHARGE CONFERENCE

734

1 only -- there's only one option for the jury in that regard.

2 MS. SHERMAN: No objection to that.

3 THE COURT: Then we'll change it.

4 Anything else?

5 Since the defense has nothing further, anything else
6 from you, Ms. Oken?

7 MS. OKEN: We do have a small number of things left.

8 The next is on page 83.

9 THE COURT: Okay.

10 MS. OKEN: There is a paragraph there defining
11 bodily injury, and that paragraph occurs both on page 83 and
12 page 88.

13 This case does involve threats of bodily injury, so
14 we wouldn't say bodily injury is irrelevant, but I don't know
15 that we need to give an enumerated list of the types of bodily
16 injury, given what the allegations are in this case. So we
17 would suggest streamlining that paragraph to sort of cut out
18 the meat of the first sentence and have it read instead:
19 Bodily injury means any injury to the body, no matter how
20 temporary.

21 So just with that last sentence, rather than an
22 enumerated list of cut, abrasion, bruise, burn, disfigurement,
23 given that those are not really at issue in this case.

24 THE COURT: Ms. Sherman.

25 MS. SHERMAN: Judge, I think that the allegations

CHARGE CONFERENCE

735

1 here are threats of bodily injury. Defining what bodily
2 injury means is part of the charge that goes to the jury, so
3 we would ask that we keep it.

4 MS. OKEN: And we wouldn't strike it in its
5 entirely, we only suggest streamlining the second sentence
6 instead of giving an enumerated list of things that aren't
7 relevant here, but we do see that bodily injury does need to
8 be defined in some way for the jury.

9 THE COURT: And, Ms. Sherman, you're agreeing or
10 disagreeing with Ms. Oken?

11 MS. SHERMAN: Disagreeing. I think we'd like to
12 maintain it.

13 THE COURT: I'll ask the maven over here.

14 Where did we get this charge?

15 THE LAW CLERK: This came from *Sand*.

16 THE COURT: *Sand*. It stays. Okay?

17 Ms. Oken.

18 MS. OKEN: So our next is on the following page,
19 actually page 84. And I think this is mostly sort of a
20 structural proposal in the Court's definition of the third
21 element that the government must prove here, which is that the
22 defendant acted with intent to retaliate.

23 I think we would suggest that sort of first with
24 respect to intent, the Court refer back to its earlier
25 instruction on intent and just advise the jury that it has

CHARGE CONFERENCE

736

1 been previously instructed on that.

2 Then with respect to retaliate, we would propose
3 including a definition there of what retaliate means. I think
4 the government had proposed one in its requested charge that
5 means: To act in reprisal or as punishment for some past act.
6 But I think in a retaliation case it's important to give the
7 jury some sort of definition of "to retaliate".

8 THE COURT: Ms. Sherman?

9 MS. SHERMAN: I'm sorry. I think we maintain that
10 as written it's fine.

11 THE COURT: And, again, Scott, this is Sand?

12 THE LAW CLERK: Yes.

13 THE COURT: It stays.

14 MS. OKEN: Our next, Your Honor, we think may be
15 just a typographical or copy and paste.

16 THE COURT: That's certainly possible.

17 MS. OKEN: I'm sure we put it in our requested
18 charge as well, but on page 85, Your Honor, there is -- there
19 is a discussion of supervised release, which I believe occurs
20 twice in this charge, and I don't know that it belongs here in
21 this particular subdivision, which is B1.

22 So I think we have just strike that language
23 entirely and it will come in later under the, I believe, B2
24 provision.

25 MS. SHERMAN: Sorry, I lost where we're talking

CHARGE CONFERENCE

737

1 about.

2 MS. OKEN: So page 85, the paragraph that says,
3 "Supervised release is similar to parole."

4 THE COURT: We say that twice.

5 MS. OKEN: It's in there twice, and we think the
6 second place is where it belongs.

7 THE COURT: It should only be there once. Or you
8 want to add it in the place where it belongs?

9 MS. SHERMAN: No objection.

10 THE COURT: You got that, Scott?

11 THE LAW CLERK: Yes, sir.

12 THE COURT: Okay.

13 MS. OKEN: And then I think that second place where
14 it occurs, which I believe is on page 91, we would just
15 suggest in that first sentence of that paragraph be amended to
16 say: Supervised release is similar to parole or probation.

17 We don't disagree that it is similar to parole, but
18 the way it's been described to this jury by Officer Aliperti
19 is that it is similar to probation.

20 To the extent the jury has an understanding of what
21 parole means, we don't object to analogizing it to parole, but
22 for purposes of what it means as a functional matter, they did
23 hear evidence that it was similar to parole -- or probation,
24 rather, so we would suggest adding in "or probation" at the
25 end of that first sentence.

CHARGE CONFERENCE

738

1 THE COURT: Any objection, Ms. Sherman?

2 MS. SHERMAN: No, that's fine.

3 THE COURT: We can edit it.

4 Do you have more, Ms. Oken?

5 MS. OKEN: Just a few, Your Honor.

6 Our next is on page 93. And I believe the longer
7 definition that follow are accurate, but the elements as
8 articulated up front with respect to 1513(e), I think this may
9 have been languaged copied/pasted as well from the 1513(b)
10 provision.

11 And so the first element, rather than being "That
12 the defendant knowingly engaged in conduct," it should just be
13 that: The defendant acted knowingly.

14 The second element, "That the defendant's conduct
15 was harmful to a person," for this subdivision should be:
16 That the defendant's action was harmful to a person, or I
17 suppose -- yes, the defendant's action was harmful.

18 And then the third element I think is accurate as it
19 is.

20 THE COURT: Ms. Sherman?

21 MS. SHERMAN: Judge, we would ask for the first to
22 keep as it, "the defendant knowingly engaged in conduct,"
23 because if you then -- if you take that out, it just then goes
24 to "the defendant's conduct," and there's no mention of
25 conduct, and the issue is whether -- whether Mr. Bantis

CHARGE CONFERENCE

739

1 knowingly engaged in conduct. So we would ask to keep it as
2 written for the first element.

3 And then the second element, the defendant -- you
4 want to change from "conduct" to "action"?

5 MS. OKEN: Yes, we think for both of those first
6 elements we would just mirror the statutory language. So
7 acted knowingly and then action was harmful to a person.
8 Because that language is different from 1513(b) to 1513(e),
9 and we think that needs to sort of be reflective in the
10 language of the charge.

11 MS. SHERMAN: I think, Judge, we would contend that
12 as written --

13 THE COURT: I want to find out where the cut and
14 paste is the same?

15 MS. OKEN: And, Your Honor, I should note it is
16 accurately articulated in the long form that follows, in terms
17 of it says, you know, element one is knowingly engaged in
18 conduct; element two action harmful to a person.

19 We don't object to the way that is spelled out, but
20 we think the short form version of it should be distinguished
21 from the 1513(b) language.

22 THE COURT: We're waiting on -- is that language a
23 cut and paste?

24 THE LAW CLERK: It's not *Sand*.

25 THE COURT: So we should follow the *Sand* language

CHARGE CONFERENCE

740

1 then.

2 THE LAW CLERK: Right, this portion was not in *Sand*.

3 THE COURT: We made it up, or something like that?

4 MS. OKEN: I think we had proposed language that
5 just mirrored -- because it was not in *Sand*, be just mirrored
6 the statute.

7 THE COURT: So did our change -- I'm a little bit
8 lost at sea here. And I think that to the extent that -- let
9 me ask Ms. Sherman.

10 Ms. Sherman, is Ms. Oken incorrect in how she's
11 indicating what the statutory language is? Is her proposal
12 closer to the statutory language?

13 MS. SHERMAN: I think in looking at this, the word
14 "action" probably should be changed, now I'm looking at the
15 way that it's -- from "conduct" to "action". I think that is
16 probably accurate.

17 But I think that still for the first element where
18 it says, "The defendant knowingly," I understand that the
19 statute says "knowingly," but then it moves into the action.

20 And if it's going to be broken into elements, I just
21 think that saying that "the defendant knowingly," and then
22 second the defendant's action, or took action that was harmful
23 to a person, there has to be some -- the "knowingly" has to be
24 connected with something.

25 THE COURT: Why don't we keep the "knowingly".

CHARGE CONFERENCE

741

1 MS. OKEN: We agree that it should be connected to a
2 verb, but we would use the verb that appears in the statute.
3 So the defendant acted knowingly rather than knowingly engaged
4 in conduct. Because that engaged in conduct language --

5 THE COURT: Why don't we conform this directly to
6 the statute.

7 MS. HIROZAWA: And, Your Honor, this is Nora
8 Hirozawa. I do think that the closest statutory language
9 would be that the defendant knowingly took action. And I
10 think it's that taking affirmative taking of action that is
11 critical under the statute.

12 Simply saying that he acted knowingly is too close
13 to simply just the mens rea requirement.

14 MS. OKEN: We have no issue with doing it that way.

15 THE COURT: Knowingly taking action.

16 Thank you, Ms. Hirozawa.

17 MS. HIROZAWA: Sorry to jump in.

18 THE COURT: No, please, jump when you come up with
19 good suggestions here, please just in.

20 MS. HIROZAWA: I spent a little time looking at the
21 1513 statute.

22 THE COURT: Take pride in your work. We appreciate
23 it.

24 So let's -- Scott, make sure it's -- the scrivener's
25 has gotten it the way everybody thinks it should be.

CHARGE CONFERENCE

742

1 THE LAW CLERK: Yes, so --

2 THE COURT: Read what you think everybody is going
3 to be happy with.

4 THE LAW CLERK: So I now have it as: First, the
5 defendant knowingly took an action.

6 Second, that the defendant's action was harmful to a
7 person.

8 MS. OKEN: I think we would just propose a slight
9 revision for the first element to say knowingly took action.

10 THE COURT: Yes.

11 MS. OKEN: Or took any action.

12 THE COURT: Just drop the "an" out. Knowingly took
13 action.

14 MS. SHERMAN: Thank you, Scott.

15 MS. OKEN: I think, Your Honor, I just have three
16 left.

17 The first is on page 94.

18 THE COURT: Okay.

19 MS. OKEN: Where the second element is defined, the
20 second element being action harmful to a person.

21 And we think this description sort of just echos the
22 statutory language in a way that -- we propose providing
23 further elucidation on what harm means, given that it is quite
24 broad under 1513(e). It doesn't necessarily need to be
25 physical harm, for example, so I think we would ask for an

CHARGE CONFERENCE

743

1 illustrative list, such as --

2 THE COURT: Yes. And this is *Sand*, Scott?

3 THE LAW CLERK: No, *Sand* does not have a 1513.

4 THE COURT: At all?

5 THE LAW CLERK: No.

6 THE COURT: Yes, I think this is -- I've seen some
7 of the illustrative list proposal, and I -- it's always
8 fraught with danger, in my view.

9 MS. SHERMAN: We agree with that, Judge.

10 And it was not given, there was not an illustrative
11 list given.

12 THE COURT: Okay. Yes, no, I'm not going to add
13 the -- it may lead as to a thorny note that we will have to
14 deal with, all of us, later. Overruled. Hope that cut
15 passes.

16 MS. OKEN: Thank you, Your Honor.

17 So the next is, we may have addressed this earlier
18 with the parole or probation language, but that language also
19 appears on page 96. I just want to make sure I flagged that
20 earlier.

21 THE COURT: We'll track that over.

22 MS. OKEN: Okay. Thank you.

23 And then our final two...

24 THE COURT: You're running out of pages, Mr. Oken.

25 MS. OKEN: Apologies, Your Honor.

CHARGE CONFERENCE

744

1 On page 97, there's language that says, "The
2 government does not need to prove that the federal offense for
3 which information was provided by George Harrison or James
4 Harrison was actually committed," and that sort of a
5 description of the possible commission. And we agree that
6 that should be there but that possible language appears not
7 just for subdivision "(e)" but also for subdivision (e) (2).
8 So that would also appear on page 90.

9 THE COURT: So where is it not appearing, on 90 or
10 92?

11 MS. OKEN: It appears on 97, and we would propose
12 adding it on page 90 because that one is also (b) (2) -- in
13 (b) (2), in addition to subdivision "(e)".

14 THE COURT: Ms. Sherman?

15 MS. SHERMAN: To be honest, I missed that.

16 Can you repeat that, Ms. Oken?

17 THE COURT: She went backwards. It was her fault.

18 MS. SHERMAN: What page are we talking about?

19 THE COURT: 9-0.

20 MS. SHERMAN: And what's the language?

21 MS. OKEN: You may want to start by looking the 97,
22 which has a sentence that reads, "The government does not need
23 to prove."

24 MS. SHERMAN: Okay.

25 MS. OKEN: And we think that also belongs on page 90

CHARGE CONFERENCE

745

1 with subdivision (b) (2). That first sentence. Not the
2 second.

3 MS. SHERMAN: That's fine.

4 THE COURT: Okay. We'll track it over.

5 MS. OKEN: And I'm so sorry, but I did misspeak with
6 respect to the parole or probation provision, which appears on
7 96. We think it should also be struck from there because it
8 doesn't apply to 1513(e).

9 THE COURT: So we're not adding --

10 MS. OKEN: We're adding probation where it appears,
11 but I think it should not appear here.

12 THE COURT: At all?

13 MS. OKEN: Correct, not with respect to 1513.
14 Exactly.

15 THE COURT: Any problem with that, Ms. Sherman?

16 MS. SHERMAN: No objection.

17 THE COURT: We got it, Scott?

18 THE LAW CLERK: Yes.

19 THE COURT: Okay.

20 Ms. Oken.

21 MS. OKEN: And our final comment is on page 98.

22 This is the theory of the defense instruction, which says that
23 Mr. Bantis has pled not guilty and maintains that he did not
24 commit the offense charged.

25 Of our concern with that is it's sort of -- there's

CHARGE CONFERENCE

746

1 a pretty clear presumption of innocence charge here, and to
2 the extent that this has a little bit of tension with that,
3 given that, number one, he has not pled not guilty in front of
4 this jury; and number two, he hasn't --

5 THE COURT: I've already told them that he pled not
6 guilty.

7 MS. OKEN: Sure. But then it follows with maintains
8 that he did not commit the offense charged.

9 He's not going to maintain anything in front of this
10 jury because he's not going to take the stand. And so we
11 think we would prefer to rest with the default standard
12 instruction that the Court gives on these matters rather than
13 indicating that there is a theory that has been advanced.

14 THE COURT: This is the theory that's been advanced.
15 And it's my reading of the Circuit in this area, it's a very
16 hot stove.

17 This is what the defense theory is. I'm going to
18 tell the jury that's what it is.

19 MS. OKEN: Understood, Your Honor. That was our
20 final comment.

21 THE COURT: There was one finding, and no one seems
22 to have nibbled at or questioned.

23 I could not -- we had a charge on prior inconsistent
24 statement. I can't remember anyone being confronted with a
25 prior inconsistent statement.

CHARGE CONFERENCE

747

1 MS. SHERMAN: I believe, Judge --

2 THE COURT: Did I miss it?

3 MS. SHERMAN: I believe I confronted Jessie Harrison
4 with grand jury testimony.

5 THE COURT: I just may have gotten old.

6 MS. SHERMAN: It may have not been that memorable.

7 THE COURT: It may not have been. But I could
8 not -- I could not recall.

9 All right, so that's moot. That answers that.

10 MS. SHERMAN: Thanks.

11 THE COURT: I know it was there, but no one seemed
12 to object to it, everybody ran by it.

13 MS. SHERMAN: Yes.

14 THE COURT: Okay, that's fine.

15 MS. OKEN: And, Your Honor, if we can refer back to
16 the statutory purpose language now.

17 THE COURT: Yes.

18 MS. OKEN: We do see a Second Circuit case where
19 that language was given, not with respect to 1513 but with
20 respect to closely related 1512 provision, and that statutory
21 purpose language was given there.

22 THE COURT: And it was affirmed?

23 MS. OKEN: It was.

24 MS. SHERMAN: Judge, I would correct that.

25 I'm not sure that that was affirmed, but either way

CHARGE CONFERENCE

748

1 it is a -- whether it's closely related or not, it's a
2 different statute. And the statutory purpose language that's
3 in *Sand* for 1513, cites to that one case for -- that was a
4 1512 charge.

5 So I still maintain that there has not been -- we
6 cannot find it, I'm not saying there hasn't been, we cannot
7 find a single case where statutory purpose was given in a 1513
8 charge. Mr. Bantis is not being charged under 1512, he's
9 being charged under 1513.

10 And I'm happy to provide further reasons for our
11 objection to that charge being given in this case. But I
12 think the fact that it wasn't given in *Hillard*, which is the
13 most recent 1513 trial in this building, is illustrative.

14 MS. OKEN: We think, Your Honor, given -- it's an
15 important corollary to the First Amendment charge, especially
16 in a case that doesn't exactly touch so much on the
17 First Amendment issues in the way that *Hillard* did, which is
18 why it wasn't raised in that case, and we think that,
19 given the Second Circuit's blessing of this instruction in a
20 2001 Second Circuit case, suggests that it's a perfectly
21 appropriate charge, and it does appear in *Sand*.

22 MS. HIROZAWA: Your Honor, not to get too in the
23 weed here. This is Nora Hirozawa. But there are three
24 different subsections of 1513 charged in a single count in
25 this indictment. Two of the subsections are 1513(b), (1) and

CHARGE CONFERENCE

749

1 (2), the other subsection is 1513(e).

2 The different subsections of 1513, as detailed in
3 our prior motion to strike, were at different times with
4 different legislature purposes.

5 And so I think that it adds a lot of additional
6 complication to be advising the jury about what the statutory
7 purpose was, when the statutory purpose of 1513(e), which was
8 part of the Sarbanes-Oxley Act, was to protect whistleblowers
9 from corporate retaliation.

10 So to the extent that the government wants to advise
11 about the statutory purpose, we would ask that the Court also
12 advise also them that 1513(e) was to protect whistleblowers
13 from retaliation by corporate employers. And that is not at
14 all the factual context here, so I think it's plainly beyond
15 the purview of the jury.

16 THE COURT: I guess many years ago when I was a
17 young lawyer, an older lawyer said, "You know, when you're in
18 a quandary, always follow your gut." I don't like this
19 language.

20 MS. HIROZAWA: We don't either, Your Honor.

21 THE COURT: Strike it.

22 As a former legislator, I find it offensive, so
23 strike it.

24 So we have nothing further. So we turn to the
25 verdict sheet itself.

CHARGE CONFERENCE

750

1 MS. SHERMAN: Thank you, Judge.

2 THE COURT: Any comments on the verdict sheet?

3 MS. SHERMAN: Very briefly from the defense, unless
4 the government wants to go first.

5 MS. McGRATH: We're happy to let the defense go
6 first.

7 MS. SHERMAN: The only comments, substantively in
8 terms of the elements, and this would apply for all 1, 2, 3,
9 all of them, is to separate out -- the way it reads right now
10 is it says, "1, with intent to retaliate against George
11 Harrison for attending Chris Bantis' sentencing proceeding,"
12 because that's the intent element, they also have to find
13 unanimously that he had the intent.

14 And the way it's written now is that that's almost
15 presupposed by the way it's written as opposed to leading to
16 unanimously finding intent. So we would just ask to break
17 that down into another section so as -- or to another option
18 to check off that if they unanimously found that.

19 The way it reads now it just says that, and then it
20 has A, B, threatened bodily injury. So we would ask to start
21 with the check that they unanimously found with intent to
22 retaliate against, and have that as a check box, and then I
23 would say that for all of them.

24 THE COURT: Ms. Oken.

25 MS. McGRATH: Your Honor, this is Tara McGrath for

CHARGE CONFERENCE

751

1 the government. We find that the verdict form in combination
2 with the Court's instructions make perfectly clear that the
3 jury has to find that he acted with the requisite intent and
4 that needs to be a unanimous finding. There are already a
5 number of boxes they have to box. It's quite a long verdict
6 form. And we think that will further complicate.

7 THE COURT: Well, could that be combined with
8 anything?

9 MS. McGRATH: We believe it is, Your Honor. So for
10 them to even continue down after, for instance, getting to the
11 first bullet, for them to even continue down --

12 THE COURT: Read it aloud.

13 MS. McGRATH: So the first is, "With intent to
14 retaliate against George Harrison for attending Chris Bantis'
15 proceeding in United States versus Chris Bantis, criminal
16 docket number 14388, the defendant Chris Bantis: A,
17 threatened bodily injury to Jessie Harrison; B, threatened
18 bodily injury to Andrew Harrison; or C, threatened damage to
19 Jessie Harrison's property."

20 To the extent they don't find that the intent
21 element is satisfied, they wouldn't get --

22 THE COURT: They wouldn't check a thing. Let's it
23 take out then.

24 MS. McGRATH: Your Honor, we -- as one alternative,
25 we did, and apologies for the late timing, propose another

CHARGE CONFERENCE

752

1 verdict sheet yesterday evening. I don't know if that more
2 fully addresses the defendant's concern, but I'm happy to read
3 you one example of a bullet from that, if it's helpful.

4 And so in that version it would read: The defendant
5 Chris Bantis engaged in conduct and thereby threatened bodily
6 injury to Jessie Harrison; A, with intent to retaliate against
7 George Harrison for testifying at Chris Bantis' sentencing
8 proceeding in United States versus Chris Bantis, criminal
9 docket number 14388.

10 MS. SHERMAN: And, Judge, that does not address our
11 concerns. In fact, we reviewed the proposed verdict sheet
12 from the government and had written a response, and then we
13 got Scott's verdict, or Your Honor's verdict sheet, and so we
14 didn't file a response, because the way that we anticipated
15 the verdict sheet, we agree with the way the verdict sheet is
16 laid out.

17 It was that one point, we just wanted an extra --
18 not an extra, but a box there, as well as it is for everything
19 else. But the way that the government wrote their verdict
20 sheet, which absolutely presupposes that they found to
21 threaten body harm to Jessie Harrison, we absolutely oppose
22 that.

23 So the way Your Honor wrote, it makes more sense to
24 us.

25 (Continued on the following page.)

PROCEEDINGS

753

1

2 THE COURT: And what changed? Because there is --
3 what changed?

4 MS. SHERMAN: We literally just want to put -- so
5 where it says, with intent to retaliate against George Harris
6 as number one with intent to retaliate against George Harrison
7 and then it has A, B, C. We're just asking that it's A, is
8 with intent to retaliate against George Harrison. And then,
9 B, threaten bodily injury. Just so the jury is indicating if
10 they have found that element unanimously. That's the only
11 suggestion.

12 MS. McGRATH: And, your Honor, the Government's
13 position is that requirements is very well established in both
14 the verdict form and in the instruction. And it would be
15 unusual for the jury to have a check a box for every single
16 element of the crime. Already they are not going to get to
17 any of the checked boxes as to the preference language.

18 THE COURT: Okay. Do you have -- it'll be easy for
19 me to see what you want us to do and I'll will take it back
20 and look at it and let you know.

21 MS. SHERMAN: Sure. And I'll just show it the
22 Government real quick before I give it to you.

23 THE COURT: Yeah.

24 MS. McGRATH: Your Honor, I will just note there are
25 went one 21 checkmarks and boxes that the jury has to

PROCEEDINGS

754

1 consider. And so, we don't think it's helpful for clarity for
2 any other reason to simply add more.

3 MS. SHERMAN: Understood, judge.

4 And I just want to point out, there's three separate
5 subsections charged with multiple victims. Multiple John
6 Does. That's how the Government charged their case, so this
7 is why the verdict sheet looks this way.

8 THE COURT: Yeah. It's not a very -- it's not very
9 complicated -- I guess, may be because of my civil experience,
10 it's not a very complicated verdict sheet. Ultimately.

11 MS. SHERMAN: Judge, are the only other comment that
12 we have, and I did just provide this to Scott with the
13 proposed language, in the under where it says, guilty or not
14 guilty and there's the little explanation. Where it says, if
15 you find the defendant guilty, please indicate by checking on
16 the appropriate line or lines which action you unanimously.
17 And then the language says, find, forms the basis of guilt.
18 We are going to request, which action you unanimously find the
19 Government has proven beyond a reasonable doubt.

20 THE COURT: Any view from Ms. Oken?

21 MS. OKEN: Your Honor, we think there has already
22 been a sufficient reasonable doubt instruction to the jury and
23 this verdict form mirrors the statutory. To the extent that
24 we are sort of injecting more language in there.

25 THE COURT: I'll take a look at it. You're not

PROCEEDINGS

755

1 onboard. If everybody is onboard, I am willing to be
2 flexible. If not, then I have to look more intently.

3 MS. SHERMAN: Those are the only requests from the
4 Defense. Thank you.

5 THE COURT: Very good. All right. So now where are
6 we? Ms. Sherman?

7 MS. SHERMAN: I think it's the Government now, if
8 they have any suggestions.

9 MS. McGRATH: We don't, your Honor. We have no
10 further comment.

11 THE COURT: I assume that. I think the question
12 was, and now that we've done that.

13 MS. SHERMAN: Got it.

14 THE COURT: We're on your case now.

15 MS. SHERMAN: Yes.

16 So Judge, I would like the opportunity -- I did meet
17 with or tried to meet with Officer Selwanes this morning. Was
18 informed at the time that -- that he was informed that he
19 doesn't have to speak to defense attorneys. And so, I asked
20 him to call his supervisor. I don't know what the result of
21 that conversation was. If he's still not willing to in any
22 way go over his testimony with me, I am going to request
23 permission to lead a bit, so if I can just check in with him
24 about that.

25 THE COURT: Okay. So is he here?

PROCEEDINGS

756

1 MS. SHERMAN: He is.

2 THE COURT: All right. So why don't you -- give us
3 a time. What time is it now?

4 MS. SHERMAN: 11:24.

5 THE COURT: So why don't we plan to reconvene at
6 1145. Wait a minute.

7 Do you have the jury downstairs?

8 THE COURTROOM DEPUTY: They're downstairs. I don't
9 know if they're all here.

10 THE COURT: So we'll reconvene at 11:45. Let's
11 assume if everything goes sweetly with this witness, and then
12 where are we, Ms. Sherman?

13 MS. SHERMAN: And then we'll be resting, Judge.

14 THE COURT: Okay. So let's assume -- let's assume
15 all that. Let's assume that around noon-ish.

16 Where are we vis-à-vis the summations?

17 MS. McGRATH: Your Honor, the Government is prepared
18 to begin its closing at that time.

19 THE COURT: And how about the Defense?

20 MS. SHERMAN: I believe -- I can check with
21 Ms. Hirozawa. I believe the Government does their closing and
22 then I assume there would be a lunch break. I think the
23 Defense would be prepared to do their closing after the lunch
24 break. Yes. And then, I assume the rebuttal would be after
25 that.

PROCEEDINGS

757

1 THE COURT: Yes. That's a good assumption.

2 MS. OKEN: Your Honor, we're happy to sort of -- I
3 think everybody is ready to go forward today with the rest of
4 the case and we can sort of see what time it is was when we
5 finish the Defense case and then either jump right into the
6 Government's summation or break for lunch after. Or if we're
7 running a bit longer, break for lunch first and then go
8 through the parties jury addresses.

9 THE COURT: Fine. Okay. So we're -- I got it.

10 MS. OKEN: I guess all that is to say that we would
11 not prefer not to take lunch in the middle of the Government's
12 closing. We don't expect for it to be particularly long. To
13 the extent that we are running a little bit behind schedule,
14 we propose taking lunch first and then jumping into closing
15 arguments.

16 THE COURT: You let me know. My preference would be
17 to get the first summation out and then lunch and go from
18 there. Tell me if that's feasible or not? In other words, we
19 would go to summations, then lunch, and then all of a sudden
20 it's like lunch comes at 1:30. That's not a problem either.

21 Do you understand?

22 MS. OKEN: That's fine with the Government, your
23 Honor.

24 THE COURT: Okay. All right. So we'll take a break
25 and wish Ms. Sherman good luck with her witness and wish

PROCEEDINGS

758

1 William good luck with the jury. This may all be moot. We'll
2 find out who's here.

3 MS. SHERMAN: Thank you.

4 MS. HIROZAWA: Thank you, your Honor.

5 THE COURT: Reconvene at. 11:45.

6 (A recess was taken.)

7 THE COURTROOM DEPUTY: All rise.

8 (Judge enters the courtroom.)

9 (Defendant enters the courtroom.)

10 THE COURTROOM DEPUTY: The court is back in session.

11 Counsel for both sides are present including the
12 defendant.

13 THE COURT: All right. Are we ready to proceed?

14 MS. SHERMAN: Yes, Judge.

15 Just so the Court is aware, the witness is refusing
16 to prep with me. So I'm going to try the best I can, but I
17 most likely would be asking for permission to lead. And
18 before -- I can either do it before the witness testifies or
19 after. The Defense just needs to move in the defense exhibits
20 that were part of the stipulation that was read into the
21 record.

22 THE COURT: Okay. I would move them in now.

23 MS. SHERMAN: Will do.

24 THE COURT: Actually, when the jury comes down.

25 MS. SHERMAN: Right.

PROCEEDINGS

759

1 THE COURT: Meaning, first.

2 MS. SHERMAN: We are all on the same page.

3 THE COURT: Okay.

4 MS. OKEN: And your Honor -- this is Ms. Oken from
5 the Government.

6 To the extent the parties might want to slightly
7 reconfigure the setup in advance of closing, would your Honor
8 like us to do that now or after the Defense has rested.

9 THE COURT: So why don't you reconfigure it now?

10 MS. OKEN: Sure. Thank you, your Honor.

11 It should take a moment.

12 THE COURT: No. I mean, otherwise you are ready to
13 go.

14 MS. OKEN: Yes.

15 THE COURT: Who is going do the opening summations
16 for the Government?

17 MS. OKEN: Ms. McGrath from the Government.

18 THE COURT: Ms. McGrath.

19 MS. HIROZAWA: Your Honor, my apologies, this is
20 Nora Hirozawa from the Defense.

21 I just wanted to check and see whether the Court
22 wanted to address Mr. Bantis' Rule 29 motion prior to closing
23 or whether the Court would reserve on that?

24 THE COURT: You mean at the close of the case?

25 MS. SHERMAN: Yes.

PROCEEDINGS

760

1 MS. HIROZAWA: Yes. So before summations. One of
2 the -- the reason I ask is one of the -- well, I suppose the
3 motion focuses on the 1513(b), one and two charges as it
4 pertains to property damage to Jessie Harrison specifically.
5 We don't believe there was any testimony about any threats
6 damaged to tangible property throughout the course of this
7 trial. And the other part of the motion focus on 1513(e). So
8 if the Court were to agree to dismiss on those bases, then we
9 would not address those subsections in our closing arguments.

10 THE COURT: Yes. I'm probably going to reserve
11 anyway.

12 MS. HIROZAWA: We understand. Scott's been busy.

13 THE COURT: Nora, you want to present all of that in
14 a long oral argument.

15 MS. HIROZAWA: No, your Honor. We will rest on our
16 briefing.

17 THE COURT: Yeah. So we'll take it at sidebar. You
18 make the motion and then I'll reserve at sidebar and then
19 we'll go right to summation.

20 MS. HIROZAWA: Thank you, your Honor.

21 And if the Court has any questions or would like
22 oral argument, we are happy to --

23 THE COURT: Yes, subsequent oral argument.

24 MS. HIROZAWA: We feel that our briefing speaks for
25 itself.

PROCEEDINGS

761

1 THE COURT: I have been advised by the case manager
2 that everyone is ready so we will bring in the jury.

3 (Jury enters the courtroom.)

4 THE COURT: Be seated, please.

5 Counsel will stipulate that the jury is present and
6 properly seated.

7 MS. OKEN: We do, your Honor.

8 MS. HIROZAWA: So stipulate.

9 THE COURT: Thank you, Counsel.

10 Ladies and Gentlemen, welcome back. We've tried to
11 certainly appreciate your continued attentiveness and patience
12 and sacrifice. We try to keep your time in the box down as
13 much as we can and do the work that we have to do with the law
14 and the case outside of your presence. And while you're more
15 comfortably seated, we've now done as much as that law piece
16 that we had to do to this point and we're ready now to resume.

17 You will recall when we left off yesterday the
18 Government had rested their case. And you remember all those
19 building blocks that we now turn to the defense side. You
20 will also recall from the very opening instructions that the
21 defendant had absolutely no burden of proof to produce any
22 witnesses. It's his absolute right to remain silent and do
23 not hold his silence against him.

24 Defense can call some witnesses and the defendant
25 does not testify. Nothing changes. You cannot hold the

PROCEEDINGS

762

1 defendant's silence against him in in way.

2 Does the Defense have any witnesses it does wish to
3 call?

4 MS. SHERMAN: Yes, your Honor.

5 THE COURT: And you may do so, Ms. Sherman.

6 MS. SHERMAN: Thank you.

7 We're calling a witness, Judge. The Defense at this
8 time would like to move certain exhibits into evidence. The
9 Defense moves to admit Defense Exhibits A, A1 through A4, B,
10 C, C1 through C7, D, D1 through D4, E, F, G, G1 through G4, H,
11 H1 through H2, I, J, J1 and J2, K, K1 through K4. And that's
12 pursuant to the stipulation in Government's Exhibit 1016.

13 THE COURT: So we remove the stipulation and all of
14 those exhibits come in pursuant to the stipulation.

15 MS. SHERMAN: Thank you.

16 At this time, the Defense calls Officer Mina
17 Selwanes.

18 MS. HIROZAWA: Your Honor, I'll grab him from the
19 hallway.

20 THE COURT: Yes.

21 (Witness enters the courtroom.)

22 THE COURTROOM DEPUTY: Please raise your right hand.

23 Do you solemnly swear or affirm that the testimony
24 you are about to give the truth, the whole truth, and nothing
25 but the truth so help you God.

PROCEEDINGS

763

1 THE WITNESS: Yes.

2 THE COURTROOM DEPUTY: Please state your first and
3 last name and spell it for the record.

4 THE WITNESS: M-I-N-A. S-E-L-W-E-N-A-S.

5 THE COURTROOM DEPUTY: Thank you have a seat,
6 please.

7 THE WITNESS: Yes.

8 THE COURT: Ms. Sherman.

9 MS. SHERMAN: Thank you.

10 (Continued on next page.)

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SELWANES - DIRECT - MS. SHERMAN

764

1 (Witness takes the witness stand.)

2 **MINA SELWANES**, called as a witness, having been first duly
3 sworn/affirmed, was examined and testified as follows:

4 DIRECT EXAMINATION

5 DIRECT EXAMINATION

6 BY MS. SHERMAN:

7 Q Good afternoon, Mr. Selwanes?

8 A Good afternoon.

9 Q Officer Selwanes, are you a member of the New York Police
10 Department?

11 A Yes, ma'am.

12 Q And what is your title?

13 A Parole Police Officer.

14 Q What precinct do you work out of?

15 A 68th Precinct.

16 Q And what are your duties and responsibilities as a patrol
17 officer?

18 A Just to respond to radio calls. So when somebody calls
19 9-1-1, that's the way of communication that we get the job and
20 then we respond to it.

21 Q And just before we go further, Officer Selwanes, you were
22 subpoenaed to testify here today, correct?

23 A Yes, ma'am.

24 Q Okay. And that was by the Defense, yes?

25 A Yes.

SELWANES - DIRECT - MS. SHERMAN

765

1 Q And the Defense or I, tried to speak with you before your
2 testimony, correct?

3 A Yes.

4 Q And you refused to prepare your testimony with me?

5 A Yes.

6 Q Thank you.

7 A No problem.

8 Q I want to draw your attention to September 9th of 2021.

9 Were you working that day?

10 A Yes.

11 Q And were you working alone or with a partner?

12 A That day we were three officers in the car.

13 Q Okay. So there was three of you including yourself?

14 A Yes.

15 Q And were you in uniform or plain clothes?

16 A Uniform.

17 Q And did there come a time when you responded to 6906 Fort
18 Hamilton Parkway in Brooklyn?

19 A Yes.

20 Q And why did you respond to that that location?

21 A The radio call we got, which is when somebody calls
22 9-1-1, I believe it was a radio run for a person with a
23 firearm. We responded to that job that's why.

24 Q Okay. And what time did you arrive at 6906 Fort Hamilton
25 Parkway?

SELWANES - DIRECT - MS. SHERMAN

766

1 A Around 11:10.

2 Q And can you tell me the jury what is located at 6906 Fort
3 Hamilton Parkway?

4 A It's a deli.

5 Q Do you know the name of the deli?

6 A Not off the top of my mind, no.

7 Q Okay. Is it Jimmy's 3 Sons?

8 A I'm not 100 percent sure.

9 Q Okay. And when you arrived at the location, what did you
10 observe?

11 A Once we arrived, there was a woman, which is the caller.

12 She said that somebody --

13 Q Without saying what anyone said, what did you observe?

14 A The first thing was a woman was standing over there.

15 Q Okay.

16 A Across the street from the deli.

17 Q And did there come a time when you went into the deli?

18 A Yes.

19 Q And when you went into the deli, what did you observe?

20 A I mean, there is a reason why I went to the deli.

21 Q I understand that.

22 When you went into the deli, what did you observe?

23 A I observed somebody by the register.

24 Q Okay?

25 A Paying for merchandise.

SELWANES - DIRECT - MS. SHERMAN

767

1 Q Did you see what merchandise they were paying for?

2 A No.

3 Q Okay. And the person you saw, if you saw them in the
4 courtroom today would you be able to recognize them?

5 A Yes.

6 Q Okay. Can you -- if you recognize the person here today,
7 can you point them out?

8 A The gentleman with the mask.

9 MS. SHERMAN: Indicating Mr. Bantis.

10 THE COURT: The record will reflect.

11 Q And when you saw Mr. Bantis paying at the register, what
12 was the next action that you took?

13 A I asked him for his identification. His ID.

14 Q Did he comply with your commands?

15 A Yes.

16 Q And when you were in the deli with Mr. Bantis, was there
17 other police officers in the deli?

18 A Yes.

19 Q Okay. And after you looked at his identification, did
20 there come a time when you observed another officer conduct a
21 pat down of Mr. Bantis?

22 A Yes.

23 Q And can you tell the jury what a pat down is?

24 A A pat down is when a police officer runs their hand along
25 the outer garments of an individual trying to detect like

SELWANES - DIRECT - MS. SHERMAN

768

1 objects or like foreign bodies.

2 Q Okay. And what areas of the body are checked during the
3 pat down?

4 A Mostly the waistband, pockets. That's about it.

5 Q In the chest area?

6 A Chest area too.

7 Q And when you observed -- do you remember the officer who
8 conducted the pat down?

9 A Yes.

10 Q Okay. Who was that?

11 A Officer Perez.

12 Q Okay. And when you observed Officer Perez conduct the
13 pat down, did you observe whether any weapons were recovered
14 from Mr. Bantis?

15 A There was nothing recovered.

16 Q Was there any contraband recovered from his person?

17 A No contraband.

18 Q Okay. And when Officer Perez was patting down
19 Mr. Bantis, did he resist at all?

20 A No.

21 Q Did he pull away at all?

22 A No.

23 Q Did he comply with all of your commands?

24 A He did comply.

25 Q And did you come to find out whether Mr. Bantis had any

SELWANES - DIRECT - MS. SHERMAN

769

1 belongings with him?

2 A Yes. He had a backpack.

3 Q He had a -- I'm sorry?

4 A Correction. Just a bag. Could be a gym bag.

5 Q Okay. And did you or any other officers conduct a search
6 of that bag?

7 A Yes. It was myself.

8 Q You conducted the search?

9 A Yes.

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11 (Continued on the following page.)

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SELWANES - DIRECT - MS. SHERMAN

770

1 DIRECT EXAMINATION (Continued)

2 BY MS. SHERMAN:

3 Q Okay. And what were the circumstances of the search of
4 the bag?

5 A When I looked into the bag, he just had his gym clothes
6 and a water bottle. Nothing else.

7 Q And did you conduct that search pursuant to a search
8 warrant?

9 A No, I asked him for consent. If it was okay for me to
10 look in his bag.

11 Q And consent was given?

12 A Yes.

13 Q Okay. And so I think you just said there was gym
14 clothes.

15 Can you describe in as much detail what you can
16 remember what the contents of the bag were?

17 A A bottle of water, maybe a tank top, as far as I
18 remember.

19 Q Was there a towel?

20 A Yes.

21 Q Was there a bathing suit?

22 A I don't remember that.

23 Q Was there deodorant?

24 MS. OKEN: Objection, Your Honor.

25 THE COURT: Yes, I'm going to allow it.

SELWANES - DIRECT - MS. SHERMAN

771

1 Counsel is trying to refresh his recollection.

2 A I don't recall.

3 MS. SHERMAN: Okay.

4 One moment. Can I show the witness, just for the
5 witness, defense M, M2.

6 (Exhibit published to the witness.)

7 Q Officer Selwanes, if you can you look at your screen.

8 MS. OKEN: Your Honor, may we just take one brief
9 moment to approach?

10 THE COURT: Sure.

11 (Continued on the next page.)

12 (Sidebar conference.)

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SIDEBAR CONFERENCE

772

1 (The following occurred at sidebar.)

2 MS. MCGRATH: Your Honor, during the proceeding we
3 requested to refresh witness' recollection with body-camera
4 footage without audio. Your Honor instructed that it could
5 only be done with transcripts.

6 I understand that was also your instruction before
7 we began today, and they are now showing this witness
8 body-camera footage without the audio, which we understand is
9 contrary to all your prior rulings, including during the
10 government's case.

11 MS. SHERMAN: So I specifically didn't say
12 body-camera footage for this reason. I don't know how else to
13 do it with this witness. He wouldn't talk to me beforehand,
14 and I'm trying my best.

15 THE COURT: What are you showing him?

16 MS. SHERMAN: His surveillance while he's searching
17 the bag to see the contents of the bag.

18 MS. HIROZAWA: There's also a difference between the
19 prior witness to refresh with his own body-camera footage.

20 MS. SHERMAN: I didn't specifically use the word
21 "body-camera footage". I understand. I would have prepared
22 with him before, if he had let me.

23 THE COURT: How long is it?

24 MS. SHERMAN: It's short.

25 THE COURT: We're in a box here because of that.

SIDEBAR CONFERENCE

773

1 However, to the extent that he's going to say --

2 MS. SHERMAN: Yes.

3 THE COURT: I'll let it go.

4 MS. SHERMAN: Thank you, Your Honor.

5 MS. HIROZAWA: In the alternative, if the government
6 wants to allow us to refresh his recollection with the photos,
7 that the government took of the contents of the bag, we can do
8 that.

9 MS. SASSO: That's fine.

10 MS. SHERMAN: I just want to know what was in the
11 bag.

12 THE COURT: What's in the bag?

13 MS. OKEN: No, no, I'm trying to think of the best
14 way to do it. Because I don't know --

15 MS. SHERMAN: Let's just get it.

16 MS. OKEN: I'm sorry, are you just looking for
17 anything that's not in the bag?

18 MS. SHERMAN: I just want to put in what's in the
19 bag.

20 MS. OKEN: What's in the bag.

21 THE COURT: There's an inventory sheet.

22 MS. OKEN: I don't know where it is, but...

23 MS. SHERMAN: We kept trying and trying.

24 MS. OKEN: Let's see if we can find the photo.

25 MS. SHERMAN: Fine.

SIDEBAR CONFERENCE

774

1 THE COURT: Just a little --

2 MS. SHERMAN: It doesn't matter to me. I just
3 wanted to say.

4 THE COURT: Nobody's looking at it.

5 MS. OKEN: Okay.

6 (End of sidebar conference.)

7 (Continued on the next page.)

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SELWANES - DIRECT - MS. SHERMAN

775

1 DIRECT EXAMINATION (Continued)

2 (In open court; Jury present.)

3 THE COURT: Ms. Hirozawa.

4 MS. SHERMAN: Waiting on the government, Judge.

5 Carrie, just for the witness.

6 (Exhibit published to the witness.)

7 BY MS. SHERMAN:

8 Q Is there something on your screen, Officer Selwanes?

9 THE COURT: And this is for purposes of refreshing
10 your recollection.

11 MS. SHERMAN: Right.

12 THE COURT: There'll be a series of questions that
13 will follow up after you've had an opportunity to review it.

14 BY MS. SHERMAN:

15 Q Officer Selwanes, did that refresh your recollection as
16 to the contents of the bag?

17 A Yes.

18 Q Okay. What were the contents of the bag?

19 A I think my body camera was angled in a certain way, I
20 can't see the whole view of that, but there was definitely gym
21 clothes.

22 Q Okay. Was there a bathing suit in the bag?

23 A It's not that clear.

24 Q Okay, I'll move on.

25 Did you recover any weapons in the bag?

SELWANES - CROSS - MS. OKEN

776

1 A No.

2 Q Did you recover a gun in the bag?

3 A No.

4 Q Did you recover a wooden stick in the bag?

5 A No.

6 Q Did you recover any pipe in the bag?

7 A No.

8 MS. SHERMAN: Okay. One second, please.

9 (Pause in the proceedings.)

10 MS. SHERMAN: No further questions. Thank you.

11 THE COURT: Thank you, Ms. Sherman.

12 Any cross?

13 MS. OKEN: Very briefly, Your Honor.

14 CROSS-EXAMINATION

15 BY MS. OKEN:

16 Q Good afternoon, Officer Selwanes.

17 A Good afternoon.

18 Q You mentioned on direct there was a reason that you went
19 to that deli, right?

20 A Yes.

21 Q And that reason was the 9-1-1 call?

22 A Yes.

23 Q And that 9-1-1 call reported a possible firearm; is that
24 right?

25 A Yes.

SELWANES - CROSS - MS. OKEN

777

1 Q Okay. And is that what's known as a "1010 firearm"?

2 A Yes.

3 Q Okay. And it was a report of a suspicious person, right?

4 A Yes.

5 Q As well as a report of a possible firearm?

6 A Yes.

7 Q Okay. And you mentioned when you arrived you saw a woman
8 there; is that right?

9 A Yes.

10 Q And that was the woman who called 9-1-1?

11 A Yes.

12 Q Okay. And that woman was in distress when you arrived?

13 MS. SHERMAN: Objection.

14 THE COURT: Sustained.

15 Q Did you interact with the woman that you saw when you
16 arrived?

17 MS. SHERMAN: Objection.

18 THE COURT: I'll allow that.

19 Did you interact with her?

20 BY MS. OKEN:

21 Q You interacted with the woman that you saw when you
22 arrived, correct?

23 A Yes.

24 Q And what did you observe about that woman?

25 MS. SHERMAN: Objection. Outside of the scope of

SELWANES - CROSS - MS. OKEN

778

1 direct.

2 THE COURT: You can ask him -- you're talking about
3 what he did when he got there. That was what the direct
4 examination was.

5 BY MS. OKEN:

6 Q You interacted with that woman, correct?

7 A Yes.

8 Q And what did you observe about that woman?

9 A She was scared.

10 MS. SHERMAN: Objection.

11 THE COURT: That was his impression. I'll allow it.

12 BY MS. OKEN:

13 Q And did you learn what had happened before you arrived?

14 MS. SHERMAN: Objection.

15 THE COURT: I'm going to sustain that.

16 BY MS. OKEN:

17 Q When you say she looked scared, can you tell us what you
18 mean?

19 A She was like in distress, like her features was like
20 somebody just --

21 MS. SHERMAN: Objection.

22 THE COURT: We don't want you to speculate what
23 somebody might have done.

24 BY MS. OKEN:

25 Q What were your observations that led you to believe that

SELWANES - CROSS - MS. OKEN

779

1 she was in distress?

2 A Body language. She's just looked scared.

3 MS. OKEN: One moment.

4 Q Did she make any gestures?

5 MS. SHERMAN: Objection.

6 THE COURT: I'll allow gestures.

7 Do you recall if she made any gestures?

8 THE WITNESS: Yes.

9 BY MS. OKEN:

10 Q What gesture did she make?

11 A She said that somebody --

12 MS. SHERMAN: Objection.

13 THE COURT: Not what she said.

14 BY MS. OKEN:

15 Q Can you describe what gestures she made?

16 A (Witness complying.)

17 MS. OKEN: No further questions, Your Honor.

18 MS. SHERMAN: Sorry, I just think that needs to
19 be noted for the record.

20 BY MS. OKEN:

21 Q Can you verbally describe for us the gesture that she
22 made?

23 A She raised her hand, and she pointed me to a certain
24 direction.

25 MS. OKEN: No further questions, Your Honor.

PROCEEDINGS

780

1 THE COURT: Any redirect?

2 MS. SHERMAN: No.

3 THE COURT: Thank you, officer. You're excused.

4 THE WITNESS: Thank you.

5 (The witness was excused.)

6 THE COURT: Any other witnesses for the defense?

7 MS. SHERMAN: No, the defense rests.

8 THE COURT: The defense rests.

9 Ladies and gentlemen, it's another building block.

10 I will ask you to remain silently in the jury box. I need to
11 speak with counsel at sidebar.

12 (Continued on the next page.)

13 (Sidebar conference.)

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SIDEBAR CONFERENCE

781

1 (The following occurred at sidebar.)

2 THE COURT: That's it?

3 MS. HIROZAWA: We're done.

4 THE COURT: I assume there's no rebuttal case.

5 MS. OKEN: That's correct, Your Honor.

6 MS. HIROZAWA: We're going to make our motion to
7 Rule 29.

8 THE COURT: You're renewing your Rule 29 motion at
9 the close of the case?

10 MS. HIROZAWA: Correct.

11 MS. SHERMAN: Yes, moving to dismiss on the elements
12 of every subsection of the charge.

13 THE COURT: Okay. The Court reserves decision
14 pending receiving briefing from the defense, and we will
15 receive other briefing as counsel wish to submit.

16 MS. OKEN: Thank you, Your Honor.

17 MS. HIROZAWA: Thank you, Your Honor.

18 THE COURT: Now is Tara is ready for summation?

19 MS. OKEN: We are, Your Honor. She's preparing her
20 laptop right now.

21 THE COURT: So what you think, Ms. Sherman, an hour?

22 MS. OKEN: Yes, yes. Maybe like 30 minutes or so
23 but, yes, we are ready to go now.

24 (Discussion was had off the record.)

25 MS. OKEN: Let's just go on just in case.

SIDE BAR CONFERENCE

782

1 Our only request with respect to timing, as we
2 mentioned earlier, is that we not break in the middle.

3 THE COURT: No.

4 MS. OKEN: Okay, great.

5 Thank you, Your Honor.

6 THE COURT: We like keeping crazy hours.

7 MS. OKEN: Thank you.

8 (End of sidebar conference.)

9 (Continued on the next page.)

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783

1 (In open court; .)
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PROCEEDINGS

784

1 (In open court; Jury present.)

2 THE COURT: All right, ladies and gentlemen, we are
3 to the next of the building blocks.

4 And if you will recall from what Scott Woods told
5 you at the beginning of the trial, the next of the building
6 blocks is the summations, the closing arguments of counsel.

7 The government has the right to open the summations,
8 and it also has the right to close the summations in a
9 rebuttal.

10 And just like the openings, absolutely nothing that
11 you will hear from the lawyers is evidence. What you will
12 hear from the lawyers are their arguments as to what they
13 think the evidence has shown or failed to show. That's what
14 you will hear from them, and they're asking you to listen
15 carefully to what they have to say. And then when you go back
16 at the time of deliberation, you can take a look at the facts
17 as you see them and try out their arguments, both the
18 government as well the defense.

19 Now the opening argument on behalf of the government
20 will be given by Assistant United States Attorney
21 Tara McGrath.

22 Ms. McGrath.

23 MS. MCGRATH: Thank you, Your Honor.

24 And I have a PowerPoint, I don't know what you might
25 need to do to share it.

SUMMATION - MS. McGRATH

785

1 THE COURT: PowerPoints used, that, too, is not
2 evidence itself, but sometimes you may see an exhibit used
3 that's in evidence. You will only see during the course of
4 the summations. If there's a reference to an exhibit it's
5 actually an exhibit that's in evidence.

6 And keep in mind that at some point during your
7 deliberation, the exhibits that are on paper or photos and the
8 like will be delivered to you. So you don't have to remember
9 all of these exhibit numbers. You will actually have them
10 with you in the jury room.

11 Ms. McGrath.

12 MS. McGRATH: Thank you, Your Honor.

13 The defendant time and again made death threats to
14 Jessie and Andrew Harrison, against the entire Harrison
15 family. I'm going to fucking kill you. I want you dead. I
16 want your brother dead. You have no idea who you're fucking
17 with.

18 He would call them rats over and over. He would
19 stare Jessie down, make his hand into the shape of a gun and
20 point it at his temple. He would grab at his waistband making
21 her believe he had a gun.

22 The defendant wanted the whole neighborhood to know
23 that George and James were quote/unquote rats, and by
24 extension their whole family, and E&J Boutique were rats. And
25 because of that they had to pay.

SUMMATION - MS. MCGRATH

786

1 The defendant wanted George and James to pay for
2 what they had done to him, all those years earlier in 2014,
3 when they reported the defendant to the FBI, and when they
4 made recordings of the defendant spewing death threats in
5 connection with his loan sharking.

6 The defendant wanted the Harrison family to pay for
7 reporting him to his probation officer in 2019.

8 And even years later, in 2021, the defendant was
9 still thinking about George and James' involvement in his
10 earlier case, and that's when he made these threats against
11 them and their family members.

12 Ladies and gentlemen, that is witness retaliation.
13 The defendant's conduct was designed to punish witnesses and
14 to deter them from speaking with law enforcement.

15 Today, now that you've seen all the evidence, we
16 have an opportunity to walk you through the testimony and the
17 exhibits that prove the defendant's crime beyond a reasonable
18 doubt.

19 As a roadmap, I'm going to give you a very quick
20 overview of the crime charged when we get into the evidence in
21 more detail. Once we've looked at the evidence, I'll then
22 walk you through how the evidence fits into each element of
23 the crime charged.

24 Following closing statements, Judge Vitaliano will
25 instruct you on the law. To the extent anything I say differs

SUMMATION - MS. MCGRATH

787

1 from what he says, of course follow the judge.

2 The defendant is charged with one count, witness
3 retaliation.

4 But importantly there are three different prongs to
5 this charge, each of which has slightly different elements,
6 and each of which is a different basis on which the defendant
7 is guilty.

8 The three prongs are Section 1513(b)(1), 1513(b)(2),
9 and 1513(e). As you can see from this table, each has three
10 elements: A knowledge element, a harm element, and how the
11 defendant acted with intent to retaliate.

12 So first, with respect to knowingly, each prong
13 requires that the defendant acted knowingly.

14 Sections 1513(b)(1) and (b)(2) have the same harm
15 requirement, whereas Section 1513(e) has a separate harm
16 requirement. And finally, while each prong has an intent to
17 retaliate requirement, the reason for the retaliation differs
18 among each of them. As we'll claim, the government has proven
19 each of these elements without a reasonable doubt.

20 The first element, which as I mentioned, is the same
21 for each of the prongs, is that the defendant acted knowingly.
22 In other words, he acted deliberately and purposefully.

23 The second element the government must prove relates
24 to harm. Both Sections 1513(b)(1) and (b)(2) require the
25 government to prove that the defendant threatened bodily harm

SUMMATION - MS. MCGRATH

788

1 to Jessie or Andrew, or that he threatened property damage to
2 E&J Boutique.

3 For Section 1513(e), the government must prove that
4 the defendant took any action harmful to George or James.
5 Harm in its most common meaning, and includes harm to
6 reputation, emotional distress and fear for their safety.

7 The final element the government must prove is that
8 the defendant acted with the intent to retaliate.

9 Now as I mentioned, each of these three prongs have
10 slightly different requirements in this regard.

11 1513(b) (1), the first on this table, requires that
12 the government prove the defendant acted with the intent to
13 retaliate against George Harrison for intending or providing
14 testimony at a federal proceeding; here, the defendant's
15 sentencing, in 2015.

16 Section 1513(b) (2) requires the government to prove
17 that the defendant acted with the intent to retaliate against
18 George or James for providing information to law enforcement
19 about the possible commission of a federal offense or a
20 possible violation of supervised release.

21 And Section 1513(e) requires the government to prove
22 that the defendant acted with the intent to retaliate against
23 George or James for providing truthful information to law
24 enforcement about the possible commission of a federal
25 offense.

SUMMATION - MS. MCGRATH

789

1 So now that you have some familiarity with the legal
2 framework, take a careful look at the evidence. They will put
3 the defendant's action into context so you can see what he
4 said, what he did, and why he did it.

5 The PowerPoint will contain exhibit numbers and
6 references to the transcript. The PowerPoint itself, as the
7 Judge noted, is not in evidence, but when you're deliberating,
8 feel free to review any of the exhibits and request any of the
9 transcripts.

10 It all starts in 2013 when the defendant made
11 extortionate loans to George and James Harrison. You heard
12 from George that he and his wife were struggling financially
13 after he suffered an on-the-job injury at the New York
14 Sanitation Department.

15 So George went to the defendant to borrow money, but
16 the defendant charged sky-high interest rates. George made
17 weekly payments. The payments were just on interest.

18 George told you what happened when he missed a
19 payment. The defendant, quote, went crazy. The defendant
20 drove to George's house, held a wooden club to his face, and
21 threatened to kill him. And George believed the defendant.

22 Finding it impossible to keep up, and fearing for
23 his life, George reported the defendant's crime to the FBI.

24 What George didn't know was that his brother James
25 was in a similar boat. James had borrowed money from the

SUMMATION - MS. McGRATH

790

1 defendant and also sought help from law enforcement. In
2 short, George and James, fearing for their lives, went to law
3 enforcement to report the defendant's crime.

4 In 2014, both George and James agreed to record
5 their conversations with the defendant and provide those
6 recordings to law enforcement.

7 You heard George and Detective Chimienti explain how
8 those recordings were made and who they were given to. And
9 you heard the recordings yourself. Recordings where the
10 defendant accused James of reporting the defendant to the
11 cops. Recordings where the defendant described the many
12 gruesome ways he was going to kill James. And recordings
13 capturing the minute-by-minute detail of the defendant's
14 loan-sharking of George.

15 And we'll listen to just a few excerpts from those
16 recordings now.

17 (Audio recording played.) (Audio recording stopped.)

18 MS. McGRATH: In 2014, the defendant was indicted by
19 the U.S. Attorney's Office for the Eastern District of New
20 York with extortionate extension of credit, a federal crime.

21 You heard testimony from the defendant's defense
22 lawyer, Andrew Rendeiro, that during the case, the consensual
23 recordings made by George and James were referenced in
24 multiple court filings and at multiple court proceedings.

25 In October 2014, the defendant pled guilty. He

SUMMATION - MS. MCGRATH

791

1 admitted under oath that he had, quote, loaned money to
2 brothers James and George with the understanding that violence
3 could be used to collect payments.

4 And during that proceeding, the prosecutor made
5 plain for the record both John Doe is George, the person who
6 is on the recording that was provided in discovery to the
7 defendant on July 29th, 2014. And the defendant told the
8 Court that that was correct.

9 You also saw George and James referenced in the
10 defendant's presentence report, or PSR. The PSR described for
11 the Court what the defendant did to George and James, and it
12 referenced the recordings.

13 Mr. Rendeiro testified that he gave a copy of that
14 report to the defendant, and that they reviewed it together.

15 And finally, George testified that he attended the
16 defendant's sentencing in 2016 and he made a victim impact
17 statement.

18 You heard George repeat his chilling words in this
19 same courtroom just days ago, quote, I'm afraid that when this
20 man gets out, he's going to come after me and my family. I
21 know every day that while he sat in that jail cell, that the
22 only think that he could think of is when he gets out he's
23 going to bring harm to me and my family.

24 As you've seen throughout this trial, even years
25 later, the defendant could not shake the memory of George and

SUMMATION - MS. MCGRATH

792

1 James going to the cops.

2 You've also heard testimony and seen the defendant's
3 sentencing transcript where Judge Vitaliano ordered a special
4 condition; that the defendant have not have contact with the
5 victim or the victim's family.

6 At that time, Mr. Rendeiro represented to the Court,
7 "My client understands and he will not have contact with
8 them." And just a few days ago, Mr. Rendeiro testified that
9 his representation was accurate.

10 You heard testimony from U.S. Probation Officer,
11 Kristen Aliperti, that the defendant was put on supervised
12 release in the spring of 2017.

13 Officer Aliperti testified that she met the
14 defendant to discuss the conditions of his supervised release,
15 including the no contact order.

16 The defendant told her he understood. In fact, on
17 July 28th, 2017, the defendant signed a copy of the judgment
18 in this case and acknowledged that he understood all of his
19 conditions.

20 But you know that during his supervised release, the
21 defendant was thinking of his victim. Officer Aliperti
22 testified that the defendant was resentful. He indicated he
23 was on supervised release because he had been informed on by a
24 quote/unquote rat.

25 You heard testimony from Jessie Harrison, George and

SUMMATION - MS. MCGRATH

793

1 James' younger sister, that she owned a boutique on Fort
2 Hamilton Parkway called E&J. It sold cards and sports
3 memorabilia. And in 2018, that store was located at 7001 Fort
4 Hamilton Parkway, across from a souvlaki restaurant.

5 Jessie Harrison also testified that a strange bald
6 man came at her store and peered into the glass as if he were
7 looking for someone. He didn't come inside. He didn't speak
8 to her. He didn't buy anything. He just pressed his face
9 against the glass.

10 She also told you that while sweeping her
11 storefront, she started noticing a bald man wearing a velour
12 tracksuit leering at her from across the street.

13 And that time she had no idea it was the defendant,
14 a convicted loan shark who had terrorized her brothers all
15 those years ago. One day, she was on the phone with George
16 when it was happening, and she told him about it. She told
17 you that George panicked. She had no idea why, and she had no
18 idea what George did with that information.

19 But you know, because George testified about the
20 same encounter. George knew that the defendant was on
21 probation, and that he had what George called "an order of
22 protection" covering him and his family. Once George learned
23 that the defendant was lurking outside the store, he called
24 the FBI.

25 And you heard testimony from Officer Aliperti that

SUMMATION - MS. MCGRATH

794

1 she learned about the defendant's breach of the no contact
2 order. She learned that the defendant was leering at the
3 Harrison sisters and that he was staring into her store, and
4 she confronted him.

5 The defendant's reaction is telling.

6 Officer Aliperti testified that first the defendant made a
7 bald denial. He claimed to have no idea who the sisters were
8 or what E&J Boutique even was. But he quickly changed tune.

9 Suddenly he knew where the store was located, but he
10 offered excuses for why he was there. He claimed he used the
11 bus across the street and a few doors down. He claimed he
12 liked the souvlaki restaurant across the street.

13 And after that, the defendant asked Officer Aliperti
14 over and over again what she had learned and whether anyone
15 was accusing him of threatening them; or in other words, if
16 anyone had ratted again.

17 In June 2018, Officer Aliperti issued him a formal
18 letter repeating the no contact conditions. The defendant
19 signed that letter again acknowledging that he understood he
20 could have no contact with his victim. Jessie Harrison
21 testified that she didn't see the defendant again for years.

22 In the summer of 2020, the defendant came off
23 supervised release, and he no longer had the Probation
24 Department looking over his shoulder.

25 Jessie testified that in March or April of 2021,

SUMMATION - MS. MCGRATH

795

1 when she was getting ready to move her store from 7001 to 6906
2 Fort Hamilton Parkway, her brother James was there. A bald
3 white man appeared and starting hysterically laughing at
4 James. This man and James got into a fight, and Jessie
5 hurried into her store. James didn't tell her who he was, and
6 that point she still had no idea it was Chris Bantis.

7 Now Jessie also testified that when she moved stores
8 around May of 2021, something strange started happening. She
9 would get to the store shortly before 11 a.m., open the gate
10 and start her day. While sweeping outside, a raspy male voice
11 started screaming to her, "The Harrisons are rats. E&J are
12 rats. I want you dead."

13 At first she didn't even know where it was coming
14 from. And she dismissed it. She assumed it was a crazy
15 person who knew her last name because her whole family were
16 born and raised in that neighborhood. They were known around
17 there. But the threats continued, and she started seeing
18 where they were coming from. A bald white man walk on the
19 seat or in the passenger side of a white SUV.

20 Consistent with Jessie's testimony, you've seen
21 security footage from a bakery across the street showing the
22 defendant fixated on E&J, walking into the street, removing
23 his sunglasses to stare and glaring at the storefront while
24 his lips are moving.

25 (Video recording played.)

SUMMATION - MS. MCGRATH

796

1 MS. MCGRATH: In this video you can see the
2 defendant with his sunglasses in his hand in the middle of the
3 street staring in the direction of E&J.

4 (Video recording stopped.)

5 MS. MCGRATH: And again there you can see the
6 defendant with his head tilted fully to the right, again
7 staring in the direction of the store.

8 And you've seen text messages from the defendant's
9 phone, which we'll look at that more closely later, showing
10 the defendant's deep-seated hatred for people who report
11 crimes to law enforcement or who he labeled "rats".

12 Jessie testified that on August 31st, 2021, she
13 pulled up to her store with her brother, her partner Erik, and
14 her brother and nephew Anthony following in a car behind them.
15 And while she was opening the gate, the bald white man spotted
16 her brother and started screaming, "I'm going to fucking kill
17 you." James started screaming back.

18 Jessie confused, asked repeatedly, "Who is that
19 person?" And finally James told her, "This was Chris Bantis"
20 Everything flipped. The man that had been threatening her for
21 weeks was the convicted loan shark that terrorized her
22 brothers all those years before. The man she had heard so
23 much about as a child, a man she knew her brother was
24 terrified of.

25 George told you the same thing. He testified that

SUMMATION - MS. McGRATH

797

1 he heard from his mother that Jessie was being threatened and
2 he panicked. He called Jessie, and he called the FBI.

3 Their testimony is also consistent with the security
4 footage in evidence as Government Exhibits 207 and 208. At
5 about 10:10 a.m., you see the defendant walking out of
6 Jimmy's, staring at Jessie Harrison across the street, just in
7 front of the restaurant to the left.

8 And in Government Exhibit 208, Jessie saw the
9 defendant walk off screen, you see him turn around, his feet
10 facing backwards, towards the direction of E&J Boutique.

11 (Video recording played.)

12 MS. McGRATH: Pay careful attention to the
13 defendant's feet as he leaves the screen.

14

15 (Continued on the following page.)

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SUMMATION - MS. McGRATH

798

1 MS. McGRATH: (Cont'g.) You can see him turn, walk
2 backwards, and face the direction of E&J.

3 Jessie and George's testimony is also corroborated
4 by the phone records. You've seen cell site records showing
5 the defendant lingering in the vicinity after this fight.

6 MS. HIROZAWA: Objection. Misstates testimony.

7 THE COURT: I'm going to allow it.

8 It's the jury's recollection that controls.

9 MS. McGRATH: You've seen that Jessie called the
10 police to report the crime, and you heard from the testimony
11 and seen through the evidence when each of these calls was
12 made. Let's look at that more closely.

13 You see that George and Jessie spoke for the first
14 time that day around 10:25 a.m. Immediately, George called
15 Special Agent Tambrino. Then for the first time, Jessie and
16 Special Agent Tambrino speak. Moments later she calls 9-1-1
17 for help.

18 The defendant continued to fixate on E&J Boutique
19 and the Harrison family. You saw security footage from
20 September 2nd showing the defendant glaring at the store,
21 mouthing something.

22 (Video recording played; video recording stopped.)

23 You heard testimony from Andrew Harrison, who also
24 worked at E&J Boutique that until late August or early
25 September 2021, he had no knowledge of who Chris Bantis was.

SUMMATION - MS. MCGRATH

799

1 Andrew told you that around that time Jessie warned him that
 2 the defendant had been harassing the family and the store and
 3 Jessie testified to the same.

4 You also heard testimony from Andrew that on
 5 September 5th, 2021, he was at E&J with his brother Anthony
 6 going about their workday when the defendant placed his hands
 7 over his eyes and pressed his face up against the glass. The
 8 defendant was searching. Andrew called Jessie and she was,
 9 quote, frantic. Jessie told you that after Andrew called her,
 10 she panicked and contacted the FBI.

11 Again, their testimony is corroborated by the phone
 12 records. You can see in the phone location records that on
 13 September 5th, half an hour before the defendant was staring
 14 into E&J, he was in the neighborhood, blocks away. Their
 15 testimony is corroborated by the call detail record. On
 16 September 5th, Andrew called Jessie at 12:30 p.m. and minutes
 17 later she contacted the FBI.

18 You've seen evidence showing that the defendant's
 19 conduct reached new levels on September 8th, 2021. Just the
 20 day before he was texting Nikki, bragging that he would never
 21 be called a rat. He said, quote, Nobody will ever tell my son
 22 that his father is a rat, so the quicker you put me back into
 23 that fucking room, the quicker I do my time. Go fuck
 24 yourself.

25 On September 8th the defendant was carrying a wooden

SUMMATION - MS. MCGRATH

800

1 club in his duffle bag and security footage shows you that
2 once again when he left Jimmy's he glared in the direction of
3 E&J, mouthing.

4 (Video recording played; video recording stopped.)

5 Andrew testified that the defendant was calling E&J
6 rats, the Harrison rats and that they didn't know who they
7 were fucking with. And Andrew testified what it meant to be
8 called a rat. That you were someone who couldn't be trusted
9 in the community.

10 The footage shows you that the Harrisons had had
11 enough. Anthony crossed the street and confronted the
12 defendant taking a, quote, jab step in that direction before
13 turning back to the store. But it didn't end there. You've
14 seen the footage showing the defendant dropping his bag to the
15 floor, rummaging through it and pulling out a wooden club,
16 which he waved in the air. The defendant charged to the end
17 of the sidewalk, club in hand.

18 (Video recording played; video recording stopped.)

19 And you've seen footage showing Anthony and Andrew
20 going back to the store, grabbing a baseball bat and walking
21 outside before returning to E&J. Minutes later, the defendant
22 was back, pacing on the street in front of the store. Andrew
23 testified about all of that. He told you that when the
24 defendant dropped his bag, the defendant threatened that he
25 had a gun and Andrew thought he was about to die. Andrew

SUMMATION - MS. MCGRATH

801

1 testified that he and his brother locked themselves in E&J
2 Boutique, and that he called Jessie who told him she was going
3 to call 9-1-1.

4 Jessie also testified about what happened on
5 September 8th. Jessie wasn't at the store, but she got a call
6 from Andrew who sounded terrified. Jessie learned that the
7 defendant was back and she feared he had a gun. She called
8 9-1-1 and raced back to the store and when she arrived Andrew
9 was in tears and petrified. Anthony was a nervous wreck.
10 They had to go home and Jessie told you that she felt so
11 guilty she had put them in that situation.

12 Again, Jessie and Andrew's testimony are consistent
13 with the phone record. At 11:25 a.m. Andrew called Jessie.
14 After they got off the phone she immediately called 9-1-1.
15 Jessie contacted Andrew several more times and she contacted
16 the FBI.

17 You've also seen physical evidence from the events
18 of that day. Special Agent Wheeler testified that two days
19 later, on September 10th, 2021, he conducted a search of the
20 defendant's basement apartment pursuant to a search warrant.
21 He testified that they found the clothes the defendant had
22 been wearing, and he testified that he found the wooden club
23 pinned between the couch cushions.

24 This is the club the defendant used that day when he
25 told Andrew and Anthony that he had a gun and that he was

SUMMATION - MS. MCGRATH

802

1 going to kill them.

2 You've heard testimony and you've seen evidence
3 showing how everything came to a head on September 9th.
4 Jessie couldn't afford to close up shop, but she also knew
5 that Andrew and Anthony couldn't work that day so she and her
6 partner Erik came to work instead. She arrived and began to
7 sweep the storefront immediately outside and that's when the
8 defendant started screaming, I want you dead, you're fucking
9 dead. He gestured to his waistband and he made his hand into
10 the shape of a gun and pointed it at his temple. Jessie
11 panicked. She ran inside, locked the door, and called 9-1-1.
12 You heard her 9-1-1 call and you heard the panic in her voice.

13 (Audio recording played; audio recording stopped.)

14 Jessie told you during that call she observed Erik
15 going to the window to try to see if the defendant had a gun
16 and she told him to come back. Jessie testified that she took
17 a photograph of the defendant standing in front of Jimmy's
18 Deli. She told you she took that photo of him because she
19 thought she was about to die. Jessie's photograph
20 corroborates her account. You can see that one minute after
21 calling 9-1-1 she takes a photo of the defendant standing in
22 the doorway of E&J Boutique. You've seen security footage
23 showing the defendant standing in the doorway of Jimmy's on
24 several occasions, but you also saw how on this day you
25 couldn't see the defendant from that camera angle. That

SUMMATION - MS. MCGRATH

803

1 camera couldn't pick up the defendant, but Jessie's eye could.

2 You've seen Jessie's pleading and desperate text
3 messages which also corroborate her account. One minute later
4 she texted, Please, he is here. Help me. Paul, he is here.
5 Jessie's partner Erik also called 9-1-1 and you heard at the
6 end of the call that the NYPD arrived.

7 (Audio recording played; audio recording stopped.)

8 And the phone records corroborate Jessie's account.
9 You can see that she called 9-1-1 at 11:06, and then she sent
10 desperate and pleading text messages in the minutes after
11 before her husband and partner called 9-1-1.

12 You've heard testimony from Jessie and George about
13 how these events have destroyed their family. Jessie blames
14 her brothers, James and George, for putting her in the
15 situation. They no longer speak, they no longer have a
16 relationship.

17 One of the big questions you have to answer in this
18 trial is why. Why was the defendant targeting the Harrison
19 family in 2018 and in 2021? Why was he targeting E&J
20 Boutique, and you know the answer. Despite the many years
21 that had passed since 2014, the defendant was not able to get
22 George and James rattling on him off of his mind. You heard it
23 from his probation officer, who testified that around 2018 he
24 was resentful because he felt he was in his own predicament
25 after being, quote/unquote, rattled on.

SUMMATION - MS. MCGRATH

804

1 You heard it from Jessie and Andrew that the
2 defendant repeatedly called them rats, threatened to kill
3 George and James, and threatened to kill them.

4 And you heard it from the defendant himself. For
5 example, in his 2021 jail call where he told Spiro Bantis,
6 quote, people make mistakes. I'm going to suffer for it again
7 just like I did before.

8 (Audio recording played; audio recording stopped.)

9 And, you know, what was in the defendant's mind at
10 that time because you've seen his text messages. On
11 August 21st, 2021, more than five years after his sentencing,
12 the defendant was still thinking about George in that
13 courtroom. Quote: There is nobody supposed to be at my
14 sentencing, he said. But George was there. And despite
15 George's relocation efforts, the defendant was keeping tabs on
16 George. The defendant knew where he was. Quote: He's in
17 Tennessee right now, the defendant said. And you heard from
18 George he had in fact relocated to Tennessee.

19 James was on the defendant's mind too. Quote: And
20 the other piece of shit, I see him. He was ready to call
21 9-1-1. Every dog has its day.

22 In 2016, George Harrison spoke at the defendant's
23 sentencing in front of the defendant and before this court
24 stating, quote, I am afraid that when this man gets out he's
25 going to come after me and my family. And in 2018 and in

SUMMATION - MS. MCGRATH

805

1 2021, the defendant turned his nightmare into a reality.

2 Now that we've walked through the evidence, I'm
3 going to show you how the evidence fits into each of the
4 elements of the charged crime. As you know, the defendant is
5 charged with one count of witness retaliation, but there are
6 three prongs to the statute each of which is a different basis
7 on which the defendant is guilty.

8 Each of the three prongs has three elements: Acting
9 knowingly, harm, and acting with the intent to retaliate.
10 We'll go through each of these in a bit more detail.

11 So Section 1513(b)(1), as we discussed, requires
12 that the defendant acted knowingly or, in other words,
13 voluntarily and purposefully. You've heard overwhelming
14 evidence about the defendant's deliberate and targeted
15 actions. They were not by mistake or accident.

16 Section 1513(b)(1) requires that the defendant's
17 conduct threatened bodily harm to Jessie or Andrew, or
18 threatened property damage to E&J Boutique.

19 MS. HIROZAWA: Objection, your Honor. Misstates the
20 charge.

21 THE COURT: Ladies and gentlemen, the Court will be
22 instructing you on the charge, I didn't quite get exactly what
23 counsel said in her summation. To the extent that what she
24 said is going to be inconsistent with what you will receive
25 from me in the charge, you are to disregard counsel's

SUMMATION - MS. MCGRATH

806

1 expression and follow only the Court's instruction on the law.

2 You may continue Ms. McGrath.

3 MS. MCGRATH: Thank you, your Honor.

4 This is a good juncture to recall the many threats
5 the defendant made to Jessie. He told Jessie he wanted her
6 dead, he made his hands into the shape of a gun and pointed it
7 at his temple. He grabbed his waistband to make her believe
8 he had a gun. Each of those statements and actions
9 constitutes a threat of bodily harm.

10 Let's look back at the threat the defendant made to
11 Andrew. The defendant told Andrew he had a gun while
12 rummaging in his duffle bag for a weapon. The defendant waved
13 a wooden club in the air while telling Andrew that he was
14 going -- that he had no idea who he was fucking with and he
15 was going to fucking get it. And the defendant gestured to
16 his waistband again to make Andrew believe he had a gun.

17 And, finally, let's recall the defendant's threats
18 to E&J Boutique. He pressed his face in the glass and he
19 showed his waistband. He walked from other end of the street
20 into the street towards the store as if he would shoot and he
21 waved his wooden club.

22 Finally, Section 1513(b)(1) requires that the
23 government prove the defendant made those threats with the
24 intent to retaliate against George Harrison for attending or
25 testifying at an official proceeding. And you've seen that

SUMMATION - MS. MCGRATH

807

1 here.

2 You heard evidence that in 2016 the defendant was
3 sentenced in this federal courthouse, you've seen the
4 transcript from the sentencing, and you've heard testimony
5 from George about the haunting words he spoke at the
6 defendant's sentencing. Expressing his fear about the
7 defendant's future retaliation.

8 Turning to Section 1513(b) (2), that prong also has
9 three elements, the first two of which are the same as
10 Section 1513(b) (1). Again, you've seen and heard evidence
11 about the defendant's death threats to Jessie and Andrew and
12 the way in which he acted like he had a gun to shoot at her
13 through the window of the store.

14 The last element is different between the two
15 sections. Here, the government must prove the defendant acted
16 with the intent to retaliate against a person for providing
17 information to law enforcement about either the possible
18 commission of a federal offense or the possible violation of a
19 condition of supervised release. For this section the person
20 the defendant was retaliating against was either George or
21 James or both, and because this prong is a bit more involved,
22 you can break it down piece by piece.

23 MS. HIROZAWA: And your Honor, just for the record
24 I'm objecting to the demonstrative which lists E&J as a
25 victim.

SUMMATION - MS. McGRATH

808

1 THE COURT: All right. Your objection is noted.

2 MS. McGRATH: Let's start with retaliation for
3 providing information to law enforcement. How do you know the
4 defendant was retaliating against George and James for
5 providing this information? You heard testimony that George
6 and James sought help from law enforcement after they were
7 threatened by the defendant in connection with his
8 loansharking.

9 You heard the consensual recordings that George and
10 James made in which the defendant used death threats and
11 capturing the minute by minute of his illegal loan business.

12 You heard overwhelming evidence that the defendant
13 knew he had been reported to law enforcement. In a recorded
14 conversation with George, the defendant said that James went
15 to the cops. That's in Government Exhibit 12.

16 The defendant's former lawyer, Andrew Rendeiro, also
17 testified that recordings were in multiple filings and
18 referenced at multiple court appearance, including the
19 defendant's guilty plea.

20 And how do you know they went to a law enforcement
21 officer? I expect Judge Vitaliano will instruct you that for
22 purposes of this statute a law enforcement officer includes an
23 FBI special agent or an FBI task force officer. You heard
24 testimony from George that he went to the FBI to report the
25 defendant's crime. And you heard testimony from Officer

SUMMATION - MS. MCGRATH

809

1 Chimienti that he was part of a federal task force with the
2 FBI and that he investigated federal offenses.

3 And how do you know that George and James'
4 information related to the possible commission of a federal
5 offense? Detective Chimienti testified that he was working
6 with the FBI investigating federal crimes and you know that
7 the defendant was ultimately charged with and pled to
8 extortionate extension of credit, a federal crime.

9 Now let's turn to retaliation for providing
10 information relating to the possible violation of a condition
11 of supervised release. How do you know George provided
12 information about a possible violation? First, you've seen
13 numerous exhibits laying out the no contact condition of
14 supervised release and the defendant's signature acknowledging
15 that he understood those conditions.

16 Second, George testified that while the defendant
17 was on probation, George learned that the defendant was
18 harassing his sister at E&J. George testified that there was
19 what he called an order of protection preventing the defendant
20 from having any contact with his victims, and George testified
21 that he notified the FBI.

22 And, finally, you heard from U.S. Probation Officer
23 Kristen Aliperti that she received information from the FBI
24 about the possible breach and promptly confronted the
25 defendant.

SUMMATION - MS. MCGRATH

810

1 Finally, turning to Section 1513(e), like the
2 earlier two we discussed, Section 1513(e) requires the
3 defendant acted knowingly. The harm element for this prong
4 encompasses any action harmful. Harm includes not just
5 physical harm, but also reputational harm, emotional harm, and
6 fear for your safety. Let's recap some of the threats the
7 defendant made to George and James.

8 You heard testimony that on August 31st, 2021, when
9 the defendant saw James Harrison in front of E&J Boutique, the
10 defendant screamed, I am going to fucking kill you and labeled
11 him a rat. You heard testimony that for weeks the defendant
12 shouted at Jessie Harrison, quote, George is a rat and that
13 the Harrisons are rats, and I want your brother dead.

14 And you heard testimony about how the defendant's
15 threats destroyed the family relationship between Jessie,
16 James and George. You've heard and seen throughout this trial
17 testimony and evidence indicating the defendant's hatred of
18 rats and the stain that accompanies the person and their
19 family when labeled one.

20 The final element is the defendant acted with the
21 intent to retaliate against someone for providing truthful
22 information to law enforcement about the possible commission
23 of a federal offense. This element is very similar to the
24 last element of Section 1513(b) (2), but here the information
25 provided has to be truthful. So let's recap briefly.

SUMMATION - MS. MCGRATH

811

1 George and James went to law enforcement to report
2 the defendant's loansharking. They made consensual recordings
3 capturing the defendant's voice, his death threats, and the
4 operation of his loan business. That information was provided
5 to the FBI and the defendant pled guilty to the federal crime
6 of extortionate extension of credit, and at the defendant's
7 guilty plea he acknowledged that he had, in fact, loaned money
8 to, quote, brothers James and George with the understanding
9 that violence could be used to collect payment.

10 Ladies and gentlemen, thank you for your patience
11 and for your careful attention over the course of this trial.
12 I submit to you that we have proven beyond any reasonable
13 doubt that the defendant committed the crime of witness
14 retaliation and we ask that you return the only verdict
15 consistent with the evidence, guilty.

16 THE COURT: Thank you, Ms. McGrath.

17 All right, ladies and gentlemen, that will bring us
18 to the close of our elongated morning session and to the lunch
19 break. All of the admonitions that I've given you continue to
20 apply. We're still on that building block but the case is not
21 over, it's not been given to you for deliberation so that you
22 are to continue to keep an open mind. You're not to discuss
23 the case amongst yourselves or with anyone else. You're not
24 to do any research with respect to the case during your lunch
25 break.

PROCEEDINGS

812

1 Again, we're on radio silence, no communication by
2 any form or means to anyone, anywhere, that you are a juror,
3 that you're coming to this courthouse and participating in
4 this trial.

5 With all of those admonitions we wish you a good
6 lunch and where are we timewise, William.

7 (Pause in proceedings.)

8 We don't want to squeeze you too much so try to get
9 back to the jury room -- again, the cafeteria is still open
10 for you, and you're still certainly free to visit other
11 establishments in the neighborhood, but try to get back to the
12 jury room sometime between 2:15 and 2:30 and we will resume
13 the trial on the summation building block where we leave it
14 now.

15 Again, enjoy your lunch and I will forward to seeing
16 you shortly.

17 (Jury exits courtroom.)

18 THE COURT: All right. So we will see you at around
19 2:30 or so. Again, the usual rules apply, you can leave
20 anything you want to leave, William will lock it up. If you
21 think you might need it, take it with you. We'll see you at
22 that time.

23 Anything we need to attend to in the meantime?

24 MS. OKEN: No, your Honor.

25 I think no from both sides, your Honor.

PROCEEDINGS

813

1 THE COURT: Okay. Enjoy your lunch.

2 (Luncheon recess.)

3 (Continued on the next page.)

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PROCEEDINGS

814

1 A F T E R N O O N S E S S I O N

2 (Time noted: 2:15 p.m.)

3 (In open court; Jury not present.)

4 THE COURTROOM DEPUTY: All rise.

5 (Judge enters the courtroom.)

6 (Defendant enters the courtroom.)

7 THE COURTROOM DEPUTY: Court is back in session.

8 Counsel for both sides are present including the
9 defendant.

10 THE COURT: All right. Are we ready to go?

11 MS. OKEN: Yes, your Honor.

12 MS. HIROZAWA: We are, your Honor.

13 THE COURT: And Ms. Hirozawa, you're going to handle
14 the --

15 MS. HIROZAWA: I am, your Honor.

16 THE COURT: When the Court was entering the
17 summation by Ms. McGrath, there was a Defense objection to a
18 demonstrative board. The Court said it noted it. The Court
19 reviewed it, the objection, during lunch break and the
20 objection is overruled.

21 MS. HIROZAWA: Understood, your Honor.

22 Thank you for taking a look at that.

23 THE COURT: You're welcome.

24 All right. We are ready to begin. The jury is
25 here. Bring the jury in. They're here. Which is always the

SUMMATION - MS. HIROZAWA

815

1 good news. They've come back.

2 THE COURT: Ms. Oken, you're doing any rebuttal?

3 MS. OKEN: That's correct, your Honor.

4 THE COURT: So we'll take a short break after Nora
5 is finished to give you a chance to assemble your thoughts
6 because it is a rebuttal and not a second summation and then
7 we'll take that.

8 MS. OKEN: Great.

9 Thank you, your Honor.

10 (Jury enters the courtroom.)

11 THE COURT: Be seated, please.

12 Counsel will stipulate that the jury is present and
13 properly seated.

14 MS. OKEN: We do, your Honor.

15 MS. HIROZAWA: So stipulated.

16 THE COURT: Thank you very much, Counsel.

17 Ladies and Gentlemen, welcome back.

18 Hope you enjoyed your lunch. As you will recall, we
19 are at the summation phase of the building blocks. We have
20 heard the opening summations by the Government and now we have
21 the summation on behalf of the defendant by Ms. Nora Hirozawa.

22 Ms. Hirozawa.

23 MS. HIROZAWA: Thank you, your Honor.

24 Mr. Bantis did not threaten Jessie or Andrew
25 Harrison. He did not threaten them with the specific intent

SUMMATION - MS. HIROZAWA

816

1 to retaliate against George or James Harrison. And he
2 certainly did not take any action harmful to George or James
3 Harrison. There is no video. There is no credible witness
4 testimony because it didn't happen. Mr. Bantis is not guilty.

5 Now, you may remember at the beginning of this case,
6 Ms. Sherman got up here and told you what this case is about
7 and what this case isn't about. She told you that the
8 Government was would try to distract you with a bunch of
9 witnesses, testimony, and evidence from Mr. Bantis's 2014
10 case. That's exactly what they did. But as she told you at
11 the beginning, this case is not about whether George and James
12 Harrison cooperated with law enforcement back in 2014. It is
13 not about whether Mr. Bantis liked George or James Harrison.
14 It's not about whether they like him, they don't mister.

15 What you are here to decide is whether the
16 Government has proved to you beyond a reasonable doubt that
17 between 2018 and 2021, Mr. Bantis knowingly threatened Jessie
18 Harrison or Andrew Harrison with bodily jury or threatened
19 Jessie Harrison with damage to her tangible property.

20 The Government is also arguing that Mr. Bantis took
21 harmful action against George and James Harrison for
22 cooperating with law enforcement. And as you've seen over the
23 past week, the Government simply has failed do that because it
24 did not happen. The Government is asking you to believe
25 beyond a reasonable doubt that Mr. Bantis has been engaged in

SUMMATION - MS. HIROZAWA

817

1 nefarious pattern of stalking and threatening Jessie Harrison
2 for months. Over four months. But he when their video
3 surveillance analyst went through three weeks of video
4 footage, it showed Mr. Bantis going about his daily life.
5 Going to the gym, getting off the bus, going to Jimmy's 3
6 Sons, smoking a cigarette, picking up his sandwich, walking
7 home to his home a block and and a half a way. The home that
8 Mr. Bantis's family has owned for 55 years.

9 The Government is asking you to believe that
10 Mr. Bantis was stalking Jessie Harrison, but you know that's
11 not true and you can see that. Not just from the video
12 surveillance record, but from this Human Resource
13 Administration records. You can see that Mr. Bantis was going
14 to Jimmy's 3 Sons before E&J ever moved locations. Sometimes
15 he goes to Jimmy's 3 Sons early in the morning before the gym.
16 At times when E&J isn't even open. At times when Jessie
17 Harrison and Andrew Harrison is not present.

18 Now, let's turn to look at the Government's
19 evidence. The witnesses they're asking you to credit, who are
20 unbelievable and unreliable, and the video evidence does not
21 support their claims. And the Government does not do
22 sufficient investigation to back any of it up.

23 Now, Jessie Harrison is at the center of the
24 Government's case, but her testimony just does not add up.
25 She's unreliable. She's unbelievable. And when you look at

SUMMATION - MS. HIROZAWA

818

1 the other evidence that we've seen it doesn't align. Jessie
2 testified, told you all, that Mr. Bantis was stalking her and
3 threatening her, quote unquote almost every day. Between
4 May 2021 and September 2021.

5 Jessie told you repeatedly that Mr. Bantis would
6 scream at her from a white car as she was opening the store.
7 Jessie was certain of that. He was always in a white car in
8 the front or rear passenger seat or right outside of the car.
9 But you heard from Agent Ortiz, whose sole job was to look for
10 Mr. Bantis in three weeks of video footage and track his every
11 move. Agent Ortiz told you that over the course of those
12 three weeks she never saw Mr. Bantis in a car. She never saw
13 him outside of a car. She never saw him anywhere near a car.
14 Every single time she saw Mr. Bantis, he was walking on foot.

15 Agent Ortiz told you that many of the times she saw
16 Mr. Bantis, he was walking from the bus stop. You heard from
17 Probation Officer Aliperti that Mr. Bantis has been taking the
18 bus since 2017. He's been taking the bus getting off the bus
19 and going to Jimmy's 3 Sons and walking home a block and a
20 half away.

21 Now, remember just like Parkway Florist, Sancho
22 Pancho, the 99 cents store, E&J is a business. They have
23 security cameras. But Jessie Harrison told you that their
24 security cameras don't save footage. If someone had been
25 yelling the Harrisons are rats, George is a rat, I want you

SUMMATION - MS. HIROZAWA

819

1 dead, E&J is rats for over four months. Surely Jessie
2 Harrison would have installed security cameras that actually
3 records footage. Surely the Government would have gone out
4 and collected some evidence that showed Mr. Bantis in a white
5 car.

6 Now, the Government will get up here in a minute,
7 I'm sure, and argue to you that just because it's not on
8 video, doesn't mean it didn't happen. The Government will
9 claim that the angel is wrong. They'll ask you to speculate
10 about what Mr. Bantis was doing when he was standing in the
11 doorway of Jimmy's 3 Sons. They'll ask you to speculate about
12 that Mr. Bantis is screaming and gesturing across two lanes of
13 traffic at Jessie Harrison over at E&J Boutique. But remember
14 what the burden is here. The burden is not within the realm
15 of possibility. The burden that the Government is held to is
16 beyond a reasonable doubt.

17 Now, think about the other testimony and evidence
18 that you've heard this week. Jessie Harrison told you herself
19 that she never called 9-1-1 in response to this person
20 screaming at her from a car until August 31, 2021. And that's
21 despite Jessie Harrison calling 9-1-1 seven other times
22 between April 2021 and September 2021. If this had happened,
23 Jessie Harrison would have called 9-1-1.

24 She never took a photograph of Mr. Bantis like the
25 one she took on September 9th or the one she took of me and

SUMMATION - MS. HIROZAWA

820

1 Ms. Sherman out in the neighborhood. She never recorded
2 Mr. Bantis. She didn't take a photo. She didn't record him
3 because it didn't happen.

4 And think about what her nephew Andrew said. Andrew
5 has worked at E&J Boutique for six years on a weekly basis.
6 He was working from June 2021 to September 2021. He never saw
7 Mr. Bantis until he stated, September 5th. And Andrew stated
8 he never even heard about the alleged threats to his aunt
9 Jessie until the end of August 2021. Think about that.

10 Jessie Harrison claims someone is screaming threats
11 to her on an almost daily basis for four months, but Andrew
12 never hears them. He never sees them. Jessie Harrison has to
13 alert Andrew to look out for the person who is supposedly
14 terrorizing his place of employment and his aunt for months.
15 It doesn't make sense because it didn't happen.

16 Now, is it possible that Jessie Harrison genuinely
17 felt scared, worried. Is it possible that someone yelled
18 these things at Jessie Harrison from a white car between May
19 and August 2021? Sure. Jessie testified that at first she
20 thought kind of -- she kind of thought it was a prank. Those
21 are her words. She told you that she is very well-known in
22 the area. So she just thought someone was playing games.

23 But it makes you wonder what kind of reputation
24 Jessie Harrison has in the neighborhood if someone is shouting
25 I want you dead is considered a prank. We know that Jessie

SUMMATION - MS. HIROZAWA

821

1 called the police on people in the neighborhood other than
2 Mr. Bantis at least seven times between April 2021 and
3 September 2021. And we know that Jessie's brother George
4 cooperated against someone else besides Mr. Bantis.

5 And it's certainly possible that or people in the
6 neighborhood might have say motivate to yell threats at Jessie
7 Harrison. Even if it did happen, what you have to remember is
8 that there's no evidence that it was Mr. Bantis. More
9 importantly, the Government has not proved to you beyond a
10 reasonable doubt that happened or that Mr. Bantis did it.

11 Now, I want to talk about August 31st. The day that
12 Jessie really began instigating and calling 9-1-1 against
13 Mr. Bantis. We know that Mr. Bantis and James Harrison got
14 into an argument that day. We know that James Harrison chased
15 Mr. Bantis down the block that day. We know that Anthony
16 Harrison chased Mr. Bantis down the block that day.

17 Jessie Harrison described August 31st as a fight
18 between Mr. Bantis and her brother. She did not say anything
19 about Mr. Bantis threatening her on August 31st. Now, Jessie
20 also told you that she wasn't even present at E&J on
21 September 5th the day that Andrew and Anthony said they saw
22 Mr. Bantis peering through the window or September 8th. So
23 let's talk about September 9th, the only other date that
24 Jessie Harrison got -- called the police on Mr. Bantis, which
25 is the day that he gets arrested.

SUMMATION - MS. HIROZAWA

822

1 On September 9th, Jessie called 9-1-1 and told the
2 police Mr. Bantis was threatening her. Specifically she told
3 him that he had a gun. That he was armed. And you heard
4 yesterday that Jessie's partner, Eric Feuer also called 9-1-1
5 that day, the same morning, and told the 9-1-1 operator that
6 Mr. Bantis threatened to shoot him and that he also saw a gun
7 specifically on Mr. Bantis's waist.

8 We know that was a lie. Jessie Harrison and
9 Eric Feuer were together when they made those 9-1-1 calls.
10 You heard Jessie refer to him on her own 9-1-1 call. Jessie
11 said that he had gone to the window of the store to get a
12 better look. And then, after that Eric lies about seeing a
13 gun. He even lied about the specific place where he saw the
14 gun on Mr. Bantis. And then, the Government plays this 9-1-1
15 call for you yesterday knowing that it is not truthful
16 information and they don't even call Eric Feuer as a
17 witness --

18 MS. McGRATH: Objection, your Honor.

19 THE COURT: Sustained.

20 MS. HIROZAWA: -- at this trial to answer for his
21 lies.

22 You heard this morning, NYPD officers showed up on
23 the scene, at least three of them. Because reporting threats
24 with a gun is something that the police take very seriously.
25 They search Mr. Bantis's person. And you heard from

SUMMATION - MS. HIROZAWA

823

1 Officer Selwanes, that Mr. Bantis was cooperative. He gave
2 him his ID.

3 He consented to the pat down. He consented to a
4 search of his gym bag. And the police searched both
5 Mr. Bantis's person and his gym bag. What do they find? Gym
6 clothes, a towel, a water bottle. They do not find a gun.
7 Because Mr. Bantis did not have a gun. They don't find a gun
8 at his home when they search it. Even though they are
9 authorized to search for firearms. And he did not put a gun
10 in his bag that day. He did not have a gun on his waist. And
11 as Jessie Harrison admitted on the stand to you, she never
12 actually saw a gun. She lied to get the police to come to get
13 Mr. Bantis arrested.

14 Now, you know the Government -- you know that
15 Mr. Bantis did not threaten Jessie Harrison because of the
16 video surveillance. Because the Government has not showed you
17 a single second of video surveillance showing any contact at
18 all between Mr. Bantis and Jessie. You know Mr. Bantis has
19 never threatened Jessie because her story doesn't add up.

20 Now, let's talk about Jessie's nephew Andrew.
21 Andrew has no relationship with his uncle George or his uncle
22 James. And Andrew testified that he's only ever seen
23 Mr. Bantis two times. The first time he saw a man he believed
24 to be Mr. Bantis was on September 5, 2021. Andrew told you
25 that he saw a man looking in the window of E&J that day.

SUMMATION - MS. HIROZAWA

824

1 He had no contact with that man. He didn't say
2 anything to the man. The man say anything to him. It was
3 Anthony, who you didn't hear from, that told Andrew that the
4 man was Mr. Bantis. Andrew told you he never seen Mr. Bantis
5 before. He had no idea what he looked like. This could have
6 been anyone. Someone looking in the window for a rear
7 baseball card or video game, but we know it wasn't Mr. Bantis.

8 Now, how do we know that? You know from FBI Agent
9 Richard Busick. The Government's cell site location
10 information expert. That Mr. Bantis was not at E&J on
11 September 5th. Unlike August 31st and September 8th,
12 Agent Busick testified that he was definitively able to tell
13 you that Mr. Bantis's phone pinned off a tower closer to his
14 home at all of the relevant call times on September 5th.

15 And he was able to tell you that that tower
16 precluded him from concluding that Mr. Bantis was at E&J at
17 those times. Now, the Government may claim that the cell site
18 location data only shows a person's location at the time they
19 place a call or send a text message. But Mr. Bantis isn't on
20 the Sancho Pancho video footage that the Government has played
21 for you either. The Government is asking you to speculate
22 about where Mr. Bantis was when their evidence simply does not
23 show it. And they certainly did not prove it beyond a
24 reasonable doubt.

25 So let's talk about the only actually time that

SUMMATION - MS. HIROZAWA

825

1 Andrew saw Mr. Bantis. That was on September 8th. Mr. Bantis
2 was going about his daily business. You'll see on the screen
3 in the upper right corner, his bus arrives, pulls into the bus
4 station, the bus stop, that Agent Ortiz identified for you
5 yesterday. He had gone to the gym. Took the bus back to Fort
6 Hamilton Parkway and went into Jimmy's 3 Sons.

7 And I'm going to let this keep playing. You are
8 welcome to continue watching it.

9 As he's walking home from Jimmy's 3 Sons, Anthony
10 Harrison burst out of E&J and started walking directly across
11 Fort Hamilton Parkway through ongoing traffic to the side of
12 the street Mr. Bantis is on. Mr. Bantis never goes to the
13 side of the street where E&J is.

14 Anthony is visibly gesturing at Mr. Bantis as soon
15 as he walked out of E&J. And Andrew, his brother, testified
16 that he was yelling at Mr. Bantis. He was red. He was mad.
17 Anthony followed Mr. Bantis down the sidewalk and lunged at
18 him. And it was only then that Mr. Bantis rummaged around in
19 his gym bag for a wooden stick to defend himself.

20 You'll see more clips of this later. So if it's not
21 lining up with exactly what I'm saying, do not worry about
22 that. And you can always ask to review all video footage.

23 By the time Mr. Bantis finally finds the stick in
24 his gym bag, Anthony was back across the street. He was
25 nowhere near Mr. Bantis and Andrew wasn't either. Mr. Bantis

SUMMATION - MS. HIROZAWA

826

1 yelled and shook the stick. And I'll note here, it is a
2 wooden stick. It is not a gun. It is not a metal pipe. It's
3 not a wooden club. The stick is in evidence. Pick it up for
4 yourselves.

5 Mr. Bantis never crossed over to E&J's side of the
6 street. He never swung the stick at Anthony. And yet,
7 Anthony comes out of E&J brandishing a baseball bat. He
8 wasn't just displaying it so that Mr. Bantis knew he could
9 defend himself. He was hiding it behind his back until he
10 stepped in the middle of Fort Hamilton Parkway towards
11 Mr. Bantis until he was ready to use it.

12 Now, Andrew was really just a bystander to this
13 whole encounter. Look at the video and look at where Andrew
14 is in this video. You see Anthony walk out of E&J already
15 gesturing. And he doesn't go to the bodega. He makes a B
16 line to exactly where Mr. Bantis is on the other side of the
17 street.

18 Anthony is already across the street by the time
19 Andrew comes out. Andrew was just a bystander. But don't get
20 me wrong, he's certainly not a neutral observer. He's telling
21 you a version of this story to back his family up. He didn't
22 witness the initial encounter between Anthony and Mr. Bantis.
23 He doesn't know who started it. Andrew did not lunge at
24 Mr. Bantis and he didn't appear to be yelling at Mr. Bantis.
25 This whole time Andrew is just trialing his brother.

SUMMATION - MS. HIROZAWA

827

1 Now, you know from the video surveillance that
2 Andrew is exaggerated. You know that he wasn't hiding behind
3 parked cars for ten minutes or at all. You know that he was
4 walking calmly back and forth across Fort Hamilton Parkway.
5 And you know that he never called 9-1-1 that day. You know
6 that he was minimizing Anthony's conduct and exaggerating
7 Mr. Bantis's conduct. Stretching his story to fit the
8 narrative that his aunt Jessie told him.

9 Now, Andrew claims that Mr. Bantis threatened him
10 and Anthony with a gun. While -- and we don't know exactly
11 what Mr. Bantis was saying on September 8th because there is
12 no audio on this. But as you're watching the video
13 surveillance, don't just look at Mr. Bantis. Don't just look
14 at Anthony and Andrew. Look at the guy sitting in front of
15 florist shop. Look at the guy sitting on the fire hydrant.
16 Look at the people walking by. They're all looking at
17 Anthony.

18 If Mr. Bantis had been yelling, I have a gun while
19 rummaging through his bag, you think all these people would
20 just be sitting there. You would see a reaction. People
21 would be running, crouching, hiding. And don't just limit
22 that to this video. Think about this as you review all of the
23 video footage in this case. All of the days that the
24 Government claims Mr. Bantis is shouting across the street
25 loud enough for Jessie Harrison to hear all the way on the

SUMMATION - MS. HIROZAWA

828

1 other side of the street at E&J.

2 What are the reactions of people walking by? Are
3 the people walking by reacting in way you might expect if they
4 hear a man yelling, I'm going to kill you. I want you dead.
5 Or are they on their cell phones or they're leading their
6 normal lives. And remember, whatever Mr. Bantis said to
7 Anthony, it was not motivated by any specific intent to
8 retaliate against George and James Harrison for cooperating
9 with police back in 2014. It was motivated by a split second
10 flight or fight reaction. And also remember, Anthony Harrison
11 is not a charged victim here. The Government is not claiming
12 that Mr. Bantis ever yelled threats at Anthony Harrison.

13 Now, the Government played a call for you that
14 Mr. Bantis placed to his bother Spiro from jail. The
15 Government argued that when Mr. Bantis said, people make
16 mistakes, he was referring to witness retaliation. But just
17 think about it, Mr. Bantis is sitting in a jail cell. He's
18 talking about what happened on September 8th. And in
19 hindsight, he probably wished he had chosen flight other fight
20 because jail is horrible and Chris Bantis knew it.

21 But use your common sense. Who was the aggressor in
22 this situation? Who was just trying to defend himself. Who
23 crossed two lanes of ongoing traffic to start beef? Who
24 stayed on their side of the street? You may have noticed that
25 during Andrew's testimony he recited a couple of times what he

SUMMATION - MS. HIROZAWA

829

1 recalled Mr. Bantis saying on September 8th. Each time, he
2 reported that Mr. Bantis said, your fucking done. You don't
3 know who you messed with. But then, after a pause, he would
4 add, oh, and also that E&J were rats and that the Harrison's
5 were rats.

6 Again, use your common sense. It's a weird phrase.
7 And it's the exact same phrase that Jessie Harrison claims
8 Mr. Bantis was yelling at her for months. The Harrison's
9 recite the word rat like it's some sort of magic word. A word
10 that transforms a street scuffle into a federal criminal case.
11 And as Jessie Harrison knows, getting your way, is all about
12 knowing the magic words to say to police.

13 Now, let's talk for a second about common sense. As
14 I mentioned, I'm going to ask you to use your common sense.
15 And I think this is a case where it's fairly straightforward.
16 Mr. Bantis -- in assessing who the aggressor is in this case,
17 Mr. Bantis who never enters E&J, never walks on E&J side of
18 the street, never crosses over to E&J side of the street. Or
19 the Harrison family, who when they see Mr. Bantis walking on
20 the other side of the parkway, going Jimmy's 3 Sons, cross
21 over to his side of the street, yell at him, lunge at him.

22 Your common sense tells you what the video clearly
23 demonstrates. It's the Harrisons who instigate these
24 interactions. Mr. Bantis is not acting to retaliate for
25 testimony that occurred eight years ago. He's standing up for

SUMMATION - MS. HIROZAWA

830

1 himself when this family chases after him when he's trying to
2 go about his day buying a sandwich. And remember, we don't
3 have to prove that to you. It's the Government who has to
4 prove this charge beyond a reasonable doubt.

5 They didn't do that and they can't do that because
6 Mr. Bantis never threatened Jessie, Andrew, or any other
7 member of the Harrison family in retaliation for George and
8 James' cooperation eight years ago. The video evidence
9 doesn't support it and the only thing that does is a word of a
10 woman who has admitted lied to police to get what she wanted.

11 Now, I want to talk a little bit about the specific
12 subsections that the Government has charged here. And it's
13 important that you understand that all 12 of you must agree on
14 these specific elements in order to find Mr. Bantis guilty or
15 not guilty. It may sound confusing, boring. I know the
16 Government already put their chart up on a slide because stay
17 with me because Mr. Bantis's fate hinges on this.

18 Now, under first subsection 1513(b)(1), the
19 Government must prove to you beyond a reasonable doubt that
20 Mr. Bantis knowingly threatened bodily injury to Jessie, or
21 Andrew Harrison or that Mr. Bantis knowingly threatened
22 damaged to the tangible property of Jessie Harrison. That's
23 not included on this slide. We didn't hear any testimony at
24 all about any damage to tangible property or any threatens of
25 damage to tangible property. So I would submit you don't need

SUMMATION - MS. HIROZAWA

831

1 to consider that.

2 To find Mr. Bantis guilty, you have to unanimously
3 agree on who he threatened and what threatened; bodily injury
4 or property damage. And you have to unanimously agree that
5 Mr. Bantis made those threats with the specific intent to
6 retaliate against George Harrison for testifying at his
7 sentencing hearing.

8 Now, 1513(b) (2), second subsection, is very similar.
9 Just like 1513(b) (1), you have to agree on who he threatened.
10 And you have to agree on what he threatened. The difference
11 is that you also have to unanimously agree that Mr. Bantis
12 made those threats with the specific intent to retaliate
13 against George Harrison for providing information regarding
14 the commission of a federal offense or in violation of
15 supervised release to law enforcement or that he acted with
16 the specific intent to retaliate against James Harrison for
17 doing the same. So that's the key difference.

18 The third subsection of the Government has charged,
19 1513(e) is a little different. Just bear with me.

20 Under 1513(e), the Government must prove beyond a
21 reasonable doubt that Mr. Bantis knowingly took an action.
22 That Mr. Bantis's action was harmful to either George or James
23 Harrison and that Mr. Bantis acted with the intent to
24 retaliate against that specific person for providing truthful
25 information to law enforcement regarding the commission of a

SUMMATION - MS. HIROZAWA

832

1 federal offense. You have to decide whether he committed a
2 harmful act, took harmful action against George or James,
3 unanimously. And you have to ensure that whoever you find,
4 you may find that he took a harmful action against, that that
5 person actually was the one who personally provided
6 information to law enforcement and was in retaliation for that
7 information.

8 Now, the Government will argue to you that under
9 1513(e) any alleged threats to Jessie or Andrew could
10 constitute harmful action to George or James. They'll argue
11 that its resulted in a deterioration of their relationships.
12 But the Government has to show that any harm stems from an
13 action that Mr. Bantis actually and knowingly took. And that
14 the action that he specifically -- and that he specifically
15 intended to retaliate against the person who personally
16 provided information. This is not a chain of causations.
17 This is not the butterfly effect. Mr. Bantis has to take
18 action that is harmful to George or James. Attenuated harm is
19 not sufficient.

20 Now, you maybe wondering, there's a lot of subtle
21 variations in this charge. Why is the wording so confusing?
22 You know why, because the Government is throwing everything at
23 the wall just to see if what sticks. Property damage, we
24 didn't hear a single word of testimony about property damage.
25 So just remember as you're going to through the jury

SUMMATION - MS. HIROZAWA

833

1 instructions, as Judge Vitaliano is instructing you, stay
2 focused and do not become overwhelmed by the choose your own
3 adventure options that the Government will argue to you. All
4 of them end with not guilty.

5 Now, Judge Vitaliano will give you other
6 instructions on the law as well. And he'll tell you that you
7 can consider not just the evidence that you have heard and
8 seen, but also the absence of evidence. So I want to talk
9 about a few elephants in the room. Where is James Harrison?
10 The Government charged James Harrison as a victim, a named
11 victim in this case, but where is he? What do we know about
12 him.

13 You heard a lot of about James Harrison from back in
14 2014. You heard about the voicemails that he received from
15 Mr. Bantis back in 2014. And those voicemails sound bad. But
16 you have to ask yourself, what did the 83 minute voicemail
17 that Mr. Bantis was responding to sound like. The 83 minute
18 voicemail that George Harrison admitted contained threats to
19 Mr. Bantis' family.

20 You heard Jessie Harrison tell you that her bother
21 James is a tough guy. And that on August 31st, he chased
22 Mr. Bantis down the block. Why isn't he here? Why don't we
23 hear from him? How can you know whether he was threatened or
24 whether Mr. Bantis took any harmful action towards him, if we
25 don't hear from him. The Government may claim that you should

SUMMATION - MS. HIROZAWA

834

1 consider reputational or emotional harm to James. But how can
2 you, when you have no idea what his representation is. You
3 have no idea what an emotional harm he may have actually felt.

4 And James wasn't the only person to chase Mr. Bantis
5 down the block on August 31st. Jessie told you that her
6 nephew Anthony also chased Mr. Bantis down the block that same
7 day. Who is Anthony Harrison. Where is Anthony Harrison.
8 Jessie's nephew who worked at E&J Boutique for just one week.
9 Yet somehow allegedly saw Mr. Bantis three times and chased
10 him not once, but twice. Who's the real victim here? Who is
11 the aggressor? Who has beef with who?

12 And why didn't Jessie and Andrew want Anthony to
13 talk to the NYPD when they arrived on August 31st or
14 September 8th? Why didn't Anthony ever talk to
15 Agent Tambrino? And speaking of Agent Tambrino, why -- or
16 Paul as the Harrison's call him, why didn't we hear from him?
17 Agent Tambrino is the case agent on this case. He was the
18 case agent on Mr. Bantis's case back in 2014.

19 He responded to E&J Boutique repeatedly. He's
20 exchanged more than 100 text messages and calls with Jessie
21 Harrison. You heard that Agent Tambrino went around looking
22 at video surveillance footage with Andrew Harrison back in
23 2021. He was present for the Government's preparation with
24 every single witness that you've heard from. He's been
25 sitting right here at counsel table the entire time. Not like

SUMMATION - MS. HIROZAWA

835

1 he wasn't available.

2 The Government brought in a bunch of witnesses who
3 are tangentially involved in this investigation and provided
4 you with tiny crumbs of so called evidence. We heard from
5 Agent Busick from that cell phone data for three specific
6 dates. Drove around Dyker Heights for a day. You heard from
7 Agent Ortiz who reviewed three weeks of video from Sancho
8 Pancho. You heard from Agent Wheeler who retrieved a stick
9 from Mr. Bantis's home. You heard from Agent Olszweski who
10 download the data from Mr. Bantis's phone.

11 The Government spent a lot of taxpayer money to fly
12 retired Detective Chimienti here from North Carolina to play
13 some voicemail recordings for you from 2014 recordings.
14 Recordings that Mr. Bantis doesn't dispute took place. They
15 spent a lot of money to supply George Harrison into court for
16 you and put him through yet another court proceeding just to
17 testify about what happened in 2014. Things that we don't
18 contest. They spent a lot of money --

19 MS. McGRATH: Objection, your Honor.

20 THE COURT: Sustained.

21 MS. HIROZAWA: -- bringing Agent Busick here to tell
22 you that Mr. Bantis --

23 MS. McGRATH: Objection, your Honor.

24 THE COURT: Sustained.

25 MS. HIROZAWA: They brought in Agent Busick here to

SUMMATION - MS. HIROZAWA

836

1 tell you that Mr. Bantis was either at his own house or in his
2 own neighborhood on August 31st or September 8th. But we have
3 not heard a single word, a single peep, from the one person
4 involved in this case who could actually answer some of your
5 questions.

6 So if you're left wondering, where is the video
7 surveillance? Why didn't they collect other dates? Why
8 didn't they collect other hours? Where are the photos? Where
9 is James Harrison? Where is Anthony Harrison? Where is a
10 single eyewitness who isn't related to the Harrison family?
11 Where is the evidence? You don't have to look, he's been
12 sitting right here at the Government's table for the past
13 week.

14 This is the Federal Bureau of Investigations and
15 they did not do their basic homework. They have all the
16 resources of the federal government at their disposal, but
17 they didn't preserve video surveillance. They didn't talk to
18 key witnesses, like James and Anthony Harrison. And they
19 didn't bother interviewing any of the dozens of people
20 walking down Fort Hamilton Parkway who may have witnessed
21 these encounters. And whether it's laziness or intentionally
22 choosing not to gather and present you with evidence that
23 could or would contradict the Harrison family story, that's up
24 to you.

25 Now, you heard these vulgar voicemails and

SUMMATION - MS. HIROZAWA

837

1 recordings from 2014. Text messages Mr. Bantis sent that were
2 laced with profanity. I want to be clear, the recordings and
3 the voicemail are from 2014. You simply cannot conclude
4 anything about Mr. Bantis's intent in 2021 from a recording
5 made seven years ago.

6 And let's talk about what these text messages
7 actually show. No one is accusing Mr. Bantis of contacting
8 George or threatening George. George told you himself that he
9 has no contact at all with Mr. Bantis since the 2014 case.

10 These text messages do nothing to show you what
11 actually happened on Fort Hamilton Parkway in August and
12 September 2021. They do not show that Mr. Bantis threatened
13 Jessie and Andrew Harrison. They do not show that Mr. Bantis
14 took any harmful action against George or James. And they
15 don't tell you anything about what Mr. Bantis is thinking when
16 Anthony Harrison comes charging across Fort Hamilton Parkway
17 at him.

18 The danger with evidence like this, is that it might
19 create the impression that Mr. Bantis is a bad guy. You may
20 not like his behavior, but that is not what you are here to
21 decide. You are here to decide a very narrow question, which
22 is whether Mr. Bantis threatened Jessie Harrison and Andrew
23 Harrison with the specific intent to retaliate for George and
24 James' cooperation. Those calls, those text messages, do not
25 help you in any way in making that decision. And you promised

SUMMATION - MS. HIROZAWA

838

1 at the beginning of this case that you would not let sympathy
2 or bias cloud your judgment.

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4 (Continued on the following page.)

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SUMMATION - MS. HIROZAWA

839

1 MS. HIROZAWA: Now I also want to talk briefly about
2 the period when Mr. Bantis was on probation from 2017 to 2020.
3 The government has gone on and on about Mr. Bantis leering at
4 Jessie Harrison in 2018. Now, remember, Mr. Bantis lives a
5 block away from where E&J was located at that time.

6 Officer Aliperti came up and told you that she never
7 gave Mr. Bantis a list of the specific members of the entire
8 Harrison family or the specific locations he was supposed to
9 avoid. His lawyer told you, yeah, a list is necessary to put
10 someone on notice and the judge said at his sentencing, yes,
11 this will be subject to a list provided by probation.

12 Officer Aliperti never told Mr. Bantis to avoid E&J
13 Boutique before June 2018. She never told him to avoid the
14 Harrison sisters specifically before June 2018. And what the
15 government has characterized as Mr. Bantis' admissions,
16 Officer Aliperti told you what he admitted to was using the
17 bus stop and hanging out at the souvlaki restaurant that
18 happened to be across the street from E&J Boutique. Once
19 Officer Aliperti told Mr. Bantis not to spend time there, to
20 change his bus route, even though it was right there, a block
21 from his house, Mr. Bantis did that.

22 Ultimately, the conduct that the government has
23 discussed in 2018 tells you nothing other than Mr. Bantis was
24 instructed not to go near E&J Boutique, not to have contact
25 with the Harrison sisters back in 2018 when there was a court

SUMMATION - MS. HIROZAWA

840

1 order telling him not to, he didn't.

2 Now I want to talk a little bit more about a
3 critical problem in the government's case because at court the
4 government is asking you to rest Mr. Bantis' fate on Jessie
5 Harrison's words. Ultimately, this case comes down to what
6 Jessie Harrison told you when she came in here. But what do
7 we know about Jessie Harrison? What do we know that is not in
8 dispute? Jessie Harrison got up on the stand and told you
9 that she lies to the police to get what she wants. She told
10 you that she called 9-1-1 on September 9th, the day of
11 Mr. Bantis' arrest, and told them that Mr. Bantis had a gun,
12 when she never saw a gun. She told you she had an order of
13 protection against Mr. Bantis, when she did not and she knew
14 she did not. She told you that there -- that she told the
15 9-1-1 operator that there was a marshals warrant for
16 Mr. Bantis, when there was not. She testified that her
17 brother, George, even sent her a photo of a marshals notice
18 and told her to lie to get the help she needed. Jessie
19 Harrison told you she lied.

20 Judge Vitaliano will tell you, when he gives you the
21 jury instructions, to evaluate the credibility of the
22 witnesses you've heard from. And he will tell you
23 specifically, that if a witness is shown to have willfully
24 lied about any material matter, you have the right to conclude
25 that the witness also lied about other matters. That

SUMMATION - MS. HIROZAWA

841

1 witness -- that instruction is for witnesses like Jessie
2 Harrison.

3 While we're talking about credibility, let's talk
4 about George Harrison. We could all see that George, when he
5 came into testify, appeared to be struggling and suffering
6 from some kind of physical problem. And I think it's natural
7 to feel some sort of sympathy for him, I know I do, but you
8 cannot keep that from allowing you to scrutinize the testimony
9 in this case. The fact that someone has cooperated with law
10 enforcement does not mean that you should not believe them. I
11 want to be clear that is not what we're saying, but you do
12 have a duty to consider what a witness's motivation is to
13 testify.

14 We know that George borrowed money from someone a
15 few years before he borrowed money from Mr. Bantis back in
16 2013. He did not pay that person back, and --

17 MS. McGRATH: Objection, your Honor, misstates
18 evidence.

19 THE COURT: Again, the jury's recollection will
20 control.

21 MS. HIROZAWA: You heard that he cooperated in a
22 prior loansharking case. He -- and just like in this case, as
23 you heard extensively, loansharking involves borrowing money
24 from someone, being charged interest and the way you end up
25 cooperating is if you can't pay it back. Just like it

SUMMATION - MS. HIROZAWA

842

1 happened in this case.

2 So we know that George then called up the FBI and
3 conducted secret recorded calls for them. And when that other
4 person who loaned him money, pled guilty, George Harrison
5 collected restitution. Then George testified that in 2013 his
6 financial situation changed. George borrowed money again,
7 this time from Mr. Bantis. He didn't pay that money back and
8 Mr. Bantis threatened him to get it back. And George again
9 recorded calls for the FBI. Again, George collected
10 restitution. And in addition -- and that was in addition to
11 the \$12,000 that the federal government paid him for
12 relocation expenses.

13 And George told you Mr. Bantis never physically hurt
14 him. He testified that Mr. Bantis would go crazy on him. And
15 when you initially heard that maybe you thought Mr. Bantis
16 really pummeled him, really beat him up bad, I know I did, but
17 George told you that never happened. He would hold a bat to
18 his cheek and yelled things and throw a tantrum. That was
19 seven years ago. So, when George shows up to court, when he
20 says he was scared, when he said that he dreaded the day
21 Mr. Bantis got out of jail at his sentencing hearing, when he
22 says Mr. Bantis is dangerous. When George shows up at trial
23 today seven years later to testify, you know he's doing so for
24 a reason because he knows better than to bite the hand that
25 feeds him. And he's taught Jessie how to manipulate that hand

SUMMATION - MS. HIROZAWA

843

1 too.

2 MS. McGRATH: Objection, your Honor.

3 MS. HIROZAWA: Now --

4 THE COURT: I'm going to sustain that.

5 MS. HIROZAWA: -- when these prosecutors --

6 THE COURT: Disregard that, ladies and gentlemen.

7 MS. HIROZAWA: When these prosecutors took this
8 case, when they decided to try it in federal court, they took
9 on a burden of proof to prove Mr. Bantis guilty of witness
10 retaliation beyond a reasonable doubt. That burden of proof
11 is on the government, on them alone and it never shifts not
12 even when Mr. Bantis chooses to put on a witness of his own.
13 We do not have to prove what happened; they do. And that
14 burden of proof is the highest burden in the American legal
15 system. Proof beyond a reasonable doubt. It means you're not
16 asking which version is more likely, theirs or ours. If
17 there's a reason to doubt, just one, and it does not have to
18 be the same reason for all of you, you must find Mr. Bantis
19 not guilty. And the thing to consider is that it could be a
20 variety of reasons. For one of you it could be the fact that
21 you did not hear from Anthony Harrison, James Harrison or
22 Agent Tambrino, who has been present for this entire trial.
23 For another one of you, it could be the lack of any evidence
24 to support Jessie Harrison's claims that Mr. Bantis was
25 yelling at her, stalking her, gesturing at her. For another

SUMMATION - MS. HIROZAWA

844

1 one of you, it could be that the video surveillance you did
2 see showed the only people charging at anyone were members of
3 the Harrison family coming after Mr. Bantis. And because the
4 government did not present to you any video, audio or other
5 evidence of Jessie Harrison's claims that Mr. Bantis
6 threatened her, and because we know that Andrew Harrison's
7 interaction with Mr. Bantis was limited to that one day when
8 his brother came charging across the street towards Mr. Bantis
9 and lunging at him, and because we all agree that George and
10 James cooperated with law enforcement in 2014 and that
11 Mr. Bantis and George and James don't like each other, what
12 this case really comes down to is Jessie Harrison.

13 The government is asking you to rest Mr. Bantis'
14 fate on her word. On the word of a woman who admitted on the
15 stand to lying to police. A witness who didn't flinch at
16 lying to the police. When we all know in this day and age
17 that telling the police that someone has a gun, that they are
18 armed could be a death sentence. Why would you trust her word
19 now.

20 So if you have questions about what happened between
21 James Harrison and Mr. Bantis on August 31st, if you have
22 questions about why Anthony Harrison attacked Mr. Bantis, if
23 you have questions about what other camera angles -- what
24 other camera angles would have shown, you ask the government.
25 Ms. Oken is about to get back up here, she's going to have the

SUMMATION - MS. HIROZAWA

845

1 last word. See if she answers whatever lingering questions
2 you have. But what you cannot do, what you're prohibited from
3 doing is looking to Chris Bantis.

4 Judge Vitaliano will instruct you that Mr. Bantis
5 didn't have to do anything, present anything, ask a single
6 witness a single question. And he didn't have to testify.
7 It's his constitutional right to remain silent.

8 The government's job is prove this case and to do
9 that they must overcome the presumption of innocence. Now
10 what does the presumption of innocence mean?

11 Judge Vitaliano will instruct you, but it means in
12 essence, that when Chris Bantis walked into this courtroom he
13 walked in here innocent, and he walks out of here innocent
14 unless each and every one of you believed that the government
15 has proved their case beyond a reasonable doubt.

16 Judge Vitaliano will instruct you that the
17 presumption of innocence does not get a little bit less, a
18 little bit lower or a little lighter just because you have a
19 prior conviction. It does not get lower just because
20 Mr. Bantis accepted responsibility and pled guilty for his
21 actions in 2014. We all agree, that Mr. Bantis made a mistake
22 in 2014, that is not what this case is about.

23 So, if any one of you starts saying, well, he did
24 something before, you know he probably did something again, I
25 trust that the rest of you will stand up for Mr. Bantis'

SUMMATION - MS. HIROZAWA

846

1 constitutional rights and remind that person that it makes it
2 no more likely that he is guilty in this case and we're not
3 here -- and we're not supposed to consider that.

4 The government failed here. They failed to prove
5 beyond a reasonable doubt that Mr. Bantis threatened Jessie or
6 Andrew Harrison in retaliation for George or James Harrison's
7 cooperation back in 2014. And they failed to prove beyond a
8 reasonable doubt that Mr. Bantis took any harmful action
9 against George or James in retaliation for their prior
10 cooperation, because it simply did not happen.

11 September 9th, 2021 was an ordinary morning for
12 Mr. Bantis, then all of a sudden, just as he was buying his
13 sandwich as Jimmy's 3 sons, his world was turned upside down.
14 Mr. Bantis has waited over a year for all of you to set his
15 world right again. Mr. Bantis did not do this, the government
16 did not prove it, find him not guilty.

17 THE COURT: Thank you, Ms. Hirozawa.

18 Ladies and gentlemen, we will take a 10, 15-minute
19 break to refresh and then we will return to hear the rebuttal
20 argument. Do not discuss the case amongst yourselves or with
21 anyone else, continue to keep an open mind, the case is not
22 over yet and we will see you shortly.

23 (Jury exits courtroom.)

24 THE COURT: Okay, we'll see you in 10 or 15 minutes.
25 Ms. Oken, you can put your thoughts together.

PROCEEDINGS

847

1 MS. OKEN: Thank you, your Honor.

2 (Recess.)

3 THE COURTROOM DEPUTY: All rise. Counsel for both
4 sides are present including the defendant.

5 THE COURT: Ms. Oken, are you ready?

6 MS. McGRATH: Your Honor, this Tara McGrath for the
7 government. We have one brief matter we would like to raise
8 before the jury is brought in if that's all right.

9 THE COURT: Yes.

10 MS. McGRATH: In our initial request to charge we
11 had asked that an uncalled witnesses are equally available
12 instruction be included. We didn't raise it this morning
13 because we did think your Honor had adequately addressed the
14 lay of the land with the instruction at page 37 headed, All
15 Available Evidence Need Not Be Produced. In light of the
16 defendant's summation, and the several points which the
17 government objected and where those objections were sustained,
18 we do think the request we had included is appropriate and, if
19 helpful, I'm happy to read it for you briefly.

20 There are several persons whose names you have heard
21 during the course of the trial, but who did not appear here to
22 testify and one or more of the attorneys has referred to their
23 absence from the trial. I instruct you that each party had an
24 equal opportunity or lack of opportunity to call any of these
25 witnesses. Therefore, you should not draw any inferences or

PROCEEDINGS

848

1 reach any conclusions as to what they would have testified to
2 had they been called. Their absence should not affect your
3 judgment in any way, and the instruction has been adapted from
4 the Sand instructions at number six and seven.

5 We'd also request a curative instruction regarding
6 government spending using taxpayer dollars. To add insult to
7 injury, a number of the witnesses that the defense raised were
8 not witnesses for whom the government had to spend any money
9 for their purported travel.

10 THE COURT: I'm not following that last one.

11 MS. McGRATH: During the defense summation
12 Ms. Hirozawa noted several times that while certain witnesses
13 were absent, the government had spent taxpayer dollars
14 bringing in someone from North Carolina, I think they believed
15 that someone came in from Tennessee, bringing in Special Agent
16 Busick from, you know, somewhere else. And that's -- while
17 certainly some people did fly in for this trial, others did
18 not, they are very much local and we don't think it is
19 appropriate for the jury to speculate as to how money is being
20 spent on this, particularly where on the other side of the
21 coin the defense is arguing that certain witnesses should have
22 been called, but who aren't. And so in their minds they may
23 be thinking that we're balancing some sort of budget where
24 some people can come and some people can't and it just seems
25 like it's a matter wholly inappropriate for their

PROCEEDINGS

849

1 consideration.

2 THE COURT: The defense want to be heard.

3 MS. SHERMAN: Judge, this is Marissa Sherman. In
4 terms of the curative instruction, I'm not sure what the
5 instruction that's being asked is. The objection was made,
6 the Court sustained it and told the jury not to consider it.
7 So I'm not sure what a further instruction on that would be.

8 Also just want to clarify, Ms. Hirozawa said
9 absolutely nothing about Tennessee and I am not sure if they
10 are referring to George Harrison, but in fact said nothing
11 about location for George Harrison, very careful about that.
12 So I'm not sure exactly what they're asking. The objection
13 was made, it was sustained.

14 THE COURT: I think the curative instruction is sort
15 of -- there's really two different pieces to it, the second
16 piece may be the fact that what either side spends on the cost
17 of the litigation is not for the jury's consideration.

18 MS. SHERMAN: And I don't think that we're going --
19 if the judge -- if the judge, if your Honor wants to give that
20 instruction, that's fine.

21 THE COURT: Yes. Now the uncalled witness.

22 MS. SHERMAN: As to that, Judge, I think that the
23 fact is that the witnesses that Ms. Hirozawa was referring to,
24 one is the case agent who is sitting at the table, at the
25 government's table, clearly not equally available to the

PROCEEDINGS

850

1 defense. The others are members of the family of the people
2 who testified, also clearly not equally available to the
3 defense.

4 THE COURT: I don't know if you can ever find a
5 charge where I actually gave that instruction in a criminal
6 case. I give it in a civil case, but I find it collides too
7 much with the other instruction which says that the defendant
8 doesn't have to call anybody. So the fact that there is
9 somebody equally available to the defendant, in my view, is
10 not relevant, because it collides with the defendant's right
11 to remain silent and produce no one. So to comment on, you
12 know, witnesses that are not called, they took the chance,
13 that basically collides with the charge.

14 MS. McGRATH: Your Honor, even -- we understand your
15 concern, certainly Special Agent Tambrino, we were informed by
16 the defense that they did intend to call him up until about
17 yesterday, but we would request an instruction that would
18 simply indicate that the jury shouldn't draw inferences if
19 individuals weren't called as to what they would have
20 testified to had they been called and that their abstention
21 affects the judgment. While they're, of course, permitted to
22 consider whether the government has met its burden, it is
23 inappropriate to speculate what X, Y, Z person may or may not
24 have said.

25 MS. SHERMAN: Judge, the one response to that I

PROCEEDINGS

851

1 think is that included in the instructions that your Honor is
2 giving is that they are allowed to consider the lack of
3 evidence, that's exactly what we were commenting on.

4 THE COURT: Right. They are allowed to consider the
5 lack of evidence, but not what the evidence would be if one of
6 the persons named testified.

7 MS. SHERMAN: Sure, and I -- maybe I didn't hear
8 it --

9 THE COURT: They can't say okay, you know, had
10 Special Agent Tambrino testified he would have said this. The
11 jury can't speculate on that.

12 MS. SHERMAN: Sure. I don't think Ms. Hirozawa in
13 any -- at any point said this is what they may have said.
14 What she repeatedly commented on is the fact that we didn't
15 hear from these witnesses, that one of them is a named victim,
16 I mean that's what she commented on.

17 THE COURT: Yes, and I think that's fine. The
18 question is whether or not there should be an instruction that
19 says you can consider the absence of a witness that a witness
20 didn't testify, but you can't speculate as to what they may
21 have said if they did testify.

22 MS. McGRATH: And, your Honor, briefly, Ms. Hirozawa
23 did note that they should consider what James Harrison, for
24 example, would have said about the harm, reputational or
25 otherwise, that he would have incurred had he been there. So

PROCEEDINGS

852

1 we do think your Honor's suggestion is appropriate.

2 MS. SHERMAN: Just briefly to respond to that,
3 that's not what she said. What she said was, had -- they are
4 trying to prove beyond a reasonable doubt that he suffered
5 some emotional, reputational harm, how can we know what that
6 is if we didn't hear from him. That's all she said. She
7 didn't say --

8 THE COURT: Same thing. That doesn't collide with
9 my instruction.

10 MS. SHERMAN: I understand so --

11 THE COURT: We don't know what he would have said.

12 MS. SHERMAN: Right. Sure.

13 THE COURT: And they can't fill in the blanks.

14 MS. SHERMAN: Okay. Sure. And if the Court's going
15 to give that instruction I think our position just is that the
16 comments in summation were proper on lack of evidence. I
17 don't think --

18 THE COURT: I don't disagree with that. I don't
19 disagree with that. There's an instruction on that. So we
20 are on the same page.

21 Okay. Anything else in the housekeeping variety?

22 MS. HIROZAWA: Not from the defense.

23 THE COURT: So we evaluate where we are timewise
24 whether or not we reach the deliberation stage today, but we
25 shall see. It will be dependent first on you, Ms. Oken, and

PROCEEDINGS

853

1 speed reader over here Mr. Woods.

2 MS. McGRATH: And sincere apologies, your Honor,
3 just because we're about to rebut, is the Court going to take
4 the request under advisement or has the Court made a decision
5 one way or the other?

6 THE COURT: On which?

7 MS. McGRATH: On the advising that the jurors
8 shouldn't speculate as to --

9 THE COURT: I'm going to -- listen, I'm going to
10 give those two curative instructions.

11 MS. McGRATH: Thank you very much.

12 THE COURT: Okay. Ready?

13 MS. SHERMAN: Yes, your Honor.

14 MS. OKEN: Yes, your Honor.

15 THE COURT: Hearing silence, I assume you are.

16 MS. OKEN: I apologize, your Honor.

17 THE COURT: William, get the jury.

18 (Jury enters courtroom.)

19 THE COURT: Be seated, please. Counsel will
20 stipulate that the jury is present and properly seated?

21 MS. OKEN: We do, your Honor.

22 THE COURT: Ms. Sherman, Ms. Hirozawa?

23 MS. HIROZAWA: So stipulated.

24 THE COURT: Thank you very much.

25 Ladies and gentlemen, welcome back. We're ready

PROCEEDINGS

854

1 just about to hear the rebuttal summation.

2 We were talking to counsel about legal issues.

3 There are a couple of things, two things I want to point out
4 to you. In your considerations it is not before you why
5 either side spends money on certain things in preparation of
6 their case or why they spent it, that is none of them is
7 appropriate for you to consider.

8 And as you will hear further in the instructions,
9 the formal instructions that I will give you, for your
10 deliberations it is the evidence that's produced or the
11 evidence that seems to be missing, that's for you to consider,
12 but when it comes to a witness who may not have testified you
13 can consider everything other than what the witness might have
14 said. You can't speculate as to what the witness might have
15 said had the witness actually appeared. Everything else is
16 fair for your deliberations. All right.

17 With those instructions, we are ready now for the
18 rebuttal summation, the final of that building block, and it
19 will be given to us by Assistant United States Attorney
20 Lindsey Oken. Ms. Oken.

21 MS. OKEN: Thank you, your Honor.

22 We just heard about an hour-long closing argument
23 about a couple of cherry-picked moments in time. Defense
24 wants you think that this case is only about some
25 cherry-picked snapshots in time. They want you to forget

REBUTTAL SUMMATION - MS. OKEN

855

1 everything that happened before those moments. They want you
2 to forget everything that happened after those moments and,
3 you know, I get why they want you to forget those other
4 moments, they don't look so good for the defendant.

5 They want you to forget about what happened in 2014.
6 They want you to forget about it because that's when George
7 and James went to law enforcement because they were scared for
8 their lives. That's when they agreed to help law enforcement
9 by making recordings that led to the defendant's arrest in his
10 loansharking case.

11 2014 is also when the defendant was charged in this
12 federal courthouse and when those recordings that George and
13 James made were turned over in discovery. In 2014, is when
14 the defendant pled guilty and admitted in court that he loaned
15 money to brothers George and James with the understanding that
16 violence could be used to collect payment.

17 They want you to forget about 2016, that's when the
18 defendant was sentenced. That's when George came to court and
19 told the judge that he was afraid that when this man got out,
20 he was going to come after George and his family. That's when
21 the defendant was ordered to pay restitution to George to make
22 him whole for the losses that he endured because of the
23 defendant's extortionate loan.

24 They want you to forget about what happened in 2018
25 when Jessie Harrison started seeing the defendant across the

REBUTTAL SUMMATION - MS. OKEN

856

1 street in those velour jumpsuits you saw.

2 When the defendant was confronted by his probation
3 officer for stalking the Harrison sisters, even though the
4 conditions of his supervised release prohibited him from going
5 anywhere near them. When he was told expressly stay away from
6 the Harrison sisters, stay away from E&J Boutique.

7 They certainly want you to forget about most of
8 2021, they want you to forget about early 2021 March or April
9 after E&J moved to its new location. When the defendant was
10 done with supervised release, done reporting to his probation
11 officer, and when the defendant tried to start a fight with
12 James while Jessie and her sister Lisa were nearby.

13 They want you to forget about May 2021, June 2021,
14 July 2021, when she started seeing him more. When the store
15 was now at its new location and when she started hearing that
16 raspy voice she described. The same raspy voice that you all
17 heard. The Harrisons are rats, George is a rat. I want you
18 dead.

19 They want you to forget about August 31st, 2021 when
20 Jessie heard a man screaming from across the street, the day
21 that she finally put two and two together and the first time
22 that she called 9-1-1.

23 They want you to forget about September 5th, 2021,
24 when the defendant pressed his face against the front window
25 of the E&J Boutique when Jessie's nephew Andrew was working.

REBUTTAL SUMMATION - MS. OKEN

857

1 They want you to forget about most parts of
2 September 8th, 2021. They want you to forget about how the
3 defendant started shouting from across the street goading
4 Andrew and Anthony to come outside and fight. They want you
5 to forget about how the defendant rummaged through this bag on
6 the street after he told them he had a gun and how he pulled a
7 wooden club out of that bag and brandished it out on the
8 street in the open. They want you to forget about how he came
9 back a second time that day, while Andrew and Anthony were
10 locked inside the store. When the defendant kept shouting
11 profanities and death threats from across the street.

12 They certainly want you to forget about
13 September 9th, 2021, when the defendant came back, gestured to
14 Jessie Harrison, told her you're fucking dead.

15 Now, the judge is going to instruct you on the law,
16 what he says controls, but I expect that he's going to
17 instruct you that this charge spans from June of 2018 to
18 September of 2021. So if you unanimously find that any one
19 time, any one single time the defendant threatened Jessie or
20 Andrew to retaliate or punish George or punish James, the
21 defendant is guilty.

22 Now, Ms. McGrath walked you meticulously through all
23 the proof and all of the threats that were hurled at Jessie
24 and Anthony, I'm not going to do that again, but what I will
25 tell you is we don't want you to look at the evidence

REBUTTAL SUMMATION - MS. OKEN

858

1 selectively. We want you to look at all of it. Every last
2 piece of it.

3 So let's talk about some of that evidence. There's
4 been a lot of talk about video evidence. That was supposed to
5 be the big reveal in this case, remember. The video, video
6 doesn't lie. We agree, watch the video. Watch the
7 defendant's head turn every time he walked down that block.
8 Watch his mouth move even though no one is with him. Watch
9 his feet when they're almost out of frame, when he turns
10 toward E&J, takes a few step backwards, watch him drop his bag
11 to the ground on September 8th, 2021, like Andrew told you he
12 did, and while he was at the same time telling Andrew and
13 Anthony he had a gun. Watch him pull out that club, a club
14 that he casually kept in his bag? A club that he stashed
15 under a couch cushion? Watch how long he waves that club
16 around and watch him come back moments later when Andrew and
17 Anthony were locked inside the store feeling sure that the
18 defendant had gone back to retrieve a gun.

19 Remember that footage with the little arrow at the
20 top, when he's dodging back and forth trying not to get hit by
21 a car and he's shouting threats that are loud enough for
22 Andrew and Anthony to hear from inside the store. Watch all
23 of the video. All of it.

24 And by the way, why don't passersby get involved?
25 Ladies and gentlemen, I will remind you, we're in Brooklyn,

REBUTTAL SUMMATION - MS. OKEN

859

1 New York. Think about that. Think about what happens on the
2 streets of Brooklyn, New York and what people do when they see
3 someone holding a stick in the air and waving it around.

4 We want you to watch the video. We want you to look
5 at all the evidence, but when you do you should also keep in
6 mind what the video doesn't show. You should look back at
7 Government Exhibit 104. Ms. Ortiz explained to you that the
8 bakery footage, it barely captures the other side of that
9 block. So if the defendant came from his own home, if he came
10 from anywhere from the direction of 70th Street, neither of
11 those bakery cameras were going to pick him up, like on
12 September 5th when he pressed his face up against the windows.
13 Let's remember how that camera couldn't capture him when he
14 stood in the doorway of Jimmy's, but you saw Government
15 Exhibit 129, that snapshot that Jessie took, the bakery camera
16 couldn't see him that day, but Jessie could see him that day
17 and you all have seen him that day.

18 The government is not hiding from the video. We
19 called a surveillance specialist to sit on the stand and walk
20 you through it. And Andrew told you about being asked to go
21 door to door on Fort Hamilton Parkway with an agent who was
22 looking for footage. And you also saw footage from places
23 like the bakery that Andrew didn't even go to. So why isn't
24 there more footage, the defense asks? Well, you know the
25 answer to that too.

REBUTTAL SUMMATION - MS. OKEN

860

1 The cell phone evidence, it shows you that Jessie
2 didn't contact police in May or June or July. She suffered in
3 silence until the last day of August 2021, that was the first
4 time she called 9-1-1.

5 Now, video is great, it's icing on the cake, we want
6 you to watch all of it, but the defendant wants you to wonder
7 about the evidence in the case that you didn't see, the
8 witnesses you didn't hear from. They want to distract you
9 from the evidence that you did see. We're not here to waste
10 your time, ladies and gentlemen.

11 And the judge instructed you, that you shouldn't
12 speculate as to what witnesses who weren't here would have
13 said. I expect he's also going to instruct you that no one
14 technique, no one piece of evidence is required. Look at the
15 evidence you saw, and look at all of it.

16 Now the defense has suggested that Jessie Harrison's
17 story shouldn't be believed. But how do you know that you can
18 believe Jessie Harrison's testimony? I want you to think
19 about the ways it lines up, the ways it is corroborated by the
20 other evidence in this case. The way her testimony lines
21 right up with George's, even though they barely speak.

22 Think about how the phone records that Ms. McGrath
23 showed you, phone records that come from the phone provider,
24 they lay out a timeline of phone contact that is almost
25 exactly how Jessie remembered it. And think about the video

REBUTTAL SUMMATION - MS. OKEN

861

1 you watched showing the defendant glaring across the street
2 and also think about the limits of that video and what it
3 couldn't show.

4 Think about cell site evidence that puts the
5 defendant in that area on the days leading up to his arrest.
6 That data can't pinpoint an exact spot. Special Agent Busick
7 told you that's just not how the technology works. But the
8 other evidence in this case, it can.

9 Think about the 9-1-1 calls that you heard with your
10 own ears. Think about the panic in Jessie's voice. Listen to
11 them again if you'd like to, ask for them.

12 And think about Jessie's demeanor on the stand.
13 Think about how she wouldn't stand for a wrong questions or
14 wrong answers or wrong suggestions, not from the defense and
15 also not from Ms. McGrath. Think about her testimony that she
16 was here because she got a subpoena. And remember
17 Ms. McGrath's questions about how Jessie was asked to meet
18 with the government, and how multiple times she said no.
19 Think about the defendant's own statement on that jail call
20 you heard.

21 What they don't want you to think about are the
22 inconsistencies and explanations the defendant has given for
23 his conduct over the years. Remember Officer Aliperti from
24 the Probation Department told you that in 2018 the defendant's
25 story changed in the span of a single conversation. First,

REBUTTAL SUMMATION - MS. OKEN

862

1 she told you he denied even knowing where E&J was. But
2 suddenly he admitted, well, he was there, but he gave an
3 excuse, he uses the bus stop, goes to the souvlaki place.
4 Then he repeatedly asked her whether there was a report that
5 he threatened somebody at a time when Officer Aliperti had
6 said nothing about threats. In the span of one conversation
7 he couldn't even keep his story straight and now in 2021 the
8 defense is asking you to believe yet another story. He just
9 takes the bus there.

10 MS. HIROZAWA: Objection.

11 THE COURT: Overruled.

12 MS. OKEN: The defense is asking you to believe yet
13 another story. He just takes the bus there, nothing else.
14 Just goes to Jimmy's, nothing else. Well, you heard from
15 Andrew, Jimmy's was open in 2018, but at that time it wasn't
16 across the street from E&J Boutique, the souvlaki place was.

17 MS. HIROZAWA: Objection. Facts not in evidence.

18 MS. OKEN: The souvlaki place.

19 THE COURT: Yes, I heard the souvlaki place.

20 (Continued on the next page.)

21

22

23

24

25

REBUTTAL SUMMATION - MS. OKEN

863

1 THE COURT: (Cont'g.) Yes, I heard the souvlaki
2 place. I can't tell you that -- the jury's recollection will
3 control it, but there's evidence about all of those locations.
4 And if Ms. Oken is misstating them, the jury is going to be
5 the light that finds it.

6 MS. OKEN: So you heard from Andrew, Jimmy's was
7 open, 2018. But at that time, not across the street from E&J.

8 You heard from Officer Aliperti the souvlaki place
9 left. The one that the defendant told his probation officer,
10 Officer Aliperti, was the reason he went was across the street
11 was E&J.

12 In 2018, he really loved souvlaki, got to have that
13 souvlaki. But you also heard from Jessie that the souvlaki
14 place still open in 2021, but now in 2021, E&J's not there any
15 more. New location moved to another block. We're not
16 interested in souvlaki any more. Now it's about Jimmy's the
17 deli, right?

18 MS. HIROZAWA: Objection. Misleading. Shifting.

19 THE COURT: No, she's not shifting the burden, she
20 recognizes the burden's clearly on the government, not on you.

21 MS. OKEN: Now it's all about Jimmy's, the deli
22 right across the street from E&J.

23 The defendant's jail call from 2021 also tells you
24 yet another version of the story. Don't be mad at me. I'm an
25 asshole. People make mistakes and I'm gonna to suffer for it

REBUTTAL SUMMATION - MS. OKEN

864

1 again. Just like I did before.

2 Now, ladies and gentlemen, I will remind, you the
3 defense has no burden of proof here. It is our burden. We
4 embrace that burden.

5 But when they give you a theory, when they give you
6 a story, you should scrutinize it. Think about all of the
7 explanations that the defendant has given over time. Think
8 about whether you can believe anything.

9 Now you also heard a few pieces about the defendant.
10 How he liked to spend his free his time. He lives with his
11 mother at 71st and 10th, in Brooklyn, New York. A few blocks
12 away from E&J.

13 He goes to the gym early most mornings. He works
14 out there. He takes the bus there and back and afterwards he
15 goes to Jimmy's. None of those things are in dispute. And
16 none of those things are the reason he's here today.

17 It is not a crime to live a few blocks away from E&J
18 Boutique. It is not a crime to take the bus. And it is
19 certainly not a crime to go to the Jimmy's. But it is a crime
20 to leave your home, take the bus, go to Jimmy's and then shout
21 death threats to the family members of the people who reported
22 your crimes. It is no defense and no excuse that those people
23 happened to live in your same neighborhood.

24 Now remember, it's not exactly a coincidence that
25 this all takes place in the defendant's neighborhood. We

REBUTTAL SUMMATION - MS. OKEN

865

1 started this story in 2014. The defendant was a loan shark,
2 and his victims George and James were guys from the
3 neighborhood. Guys like George who were down on their luck.
4 George Harrison got out of there. He moved away, even James.
5 But the family's still there. You heard from them, they were
6 born and raised here in Brooklyn. They're alive and their
7 businesses are on that block of Fort Hamilton Parkway.

8 But take a closer look at the defendant's schedule
9 anyway. You have some of those records in evidence. They
10 were documents that we moved after we read some stipulations.
11 But look, for example, at September 5th, 2021. The day that
12 the defendant was peering in the windows, face pressed up
13 against the glass of E&J.

14 Now the phone records show that Andrew called Jessie
15 at 12:25 p.m. that day. And she calls Special Agent Tambrino
16 five minutes later.

17 Well, the defendant didn't check in to the gym on
18 September 5th. And take a look at his SNAP benefits card.
19 You won't see a transaction at Jimmy's.

20 Now defense has put forward this theory that there
21 is a grand Harrison family conspiracy. So let's take a look
22 at that one. But before we do, I would like to first say a
23 few words about the Harrison family.

24 They are some brand of co-conspirators. Jessie is
25 not at fault because she sat and suffered in silence until

REBUTTAL SUMMATION - MS. OKEN

866

1 August 31st. She is not at fault because she told 9-1-1 she
2 had -- that he had a gun, when she believed he had a gun
3 because he wanted her to believe he had a gun.

4 The Harrisons are a family. They may not be a
5 picture perfect family, but they are a family. They are small
6 business owners. They are members of this community. They
7 deserve to be treated with some respect in this courtroom,
8 just like anybody else.

9 But the defense went after them, tried to dirty them
10 up. What does any of that --

11 MS. HIROZAWA: Objection.

12 THE COURT: Sustained.

13 MS. OKEN: What does any of that matter? The laws
14 of this country are supposed to protect everyone. The doors
15 in this courthouse should be open for everyone, not just for
16 people who have average families, not just for businesses that
17 can't afford surveillance cameras.

18 MS. HIROZAWA: Objection.

19 THE COURT: I'll allow that.

20 MS. OKEN: And it is certainly not just for perfect
21 victims. It's for victims who are real people. Real people
22 like Jessie Harrison who panic and call 9-1-1. Real people
23 like Andrew and Andrew Harrison who get fed up and who stand
24 up for themselves and their family? It's for everyone. That
25 includes the Harrisons.

REBUTTAL SUMMATION - MS. OKEN

867

1 The Harrisons have a right, the same right as
2 everybody else, to go to work every day, to feel safe at their
3 place of business, to not have death threats and insults and
4 violent gestures thrown at them. They have a right to be left
5 alone.

6 But let's set aside and indulge this conspiracy
7 theory for just one moment.

8 MS. HIROZAWA: Objection.

9 THE COURT: Sustained.

10 MS. OKEN: Now I'm going to remind you again, the
11 defendant has no burden of proof here. The burden is ours.
12 But, again, when they give a theory, you should scrutinize it
13 and scrutinize it closely. You should use your common sense.
14 The common sense that you use all the time in your daily
15 lives. No one is asking you to leave that common sense at the
16 door.

17 So let's scrutinize the Harrison family's conspiracy
18 theory. And when you do, I submit you're going to be left
19 with one pretty big question, and that is: Why?

20 Remember back in 2014, Jessie had no idea what was
21 going on with the defendant's loan sharking case. She didn't
22 know what happened to George or James back then. George told
23 you he kept it from her. Remember that Jessie had to be
24 subpoenaed to testify here in court, and that several times
25 she refused to meet with the government.

REBUTTAL SUMMATION - MS. OKEN

868

1 Jessie also told you that she and George barely have
2 a relationship any more. That she and James aren't close.
3 And the defense wants you to think she's making all this up.
4 For what?

5 And what about Andrew? Andrew who hasn't spoken to
6 George in years. Andrew who isn't close to James. Andrew who
7 was a kid in his 20s when all this happened. We have not seen
8 one shred of proof of the grand conspiracy.

9 MS. HIROZAWA: Objection.

10 THE COURT: Yes, the idea of proof, Ms. Oken, stay
11 away from that, please. Comment on the evidence without the
12 no evidence that there's a conspiracy, nor claim, that I can
13 recall.

14 MS. OKEN: In fact, let's talk about what the
15 evidence does show.

16 Phone records showing Jessie ignoring George's call
17 on September 5th, September 8th. Several times on
18 September 9th. And what about James? No call between Jessie
19 and James at all between August 1st and September 9th, 2021.
20 No calls between George and James either.

21 Special Agent Busick testified about those phone
22 communications, and the records themselves are in evidence.
23 So ask yourself, what motive does Jessie have in any of this?
24 What motive does Andrew have in any of this? And by the way,
25 if they did want to come in here and lie to you, wouldn't they

REBUTTAL SUMMATION - MS. OKEN

869

1 have done a better job? Andrew still thinks that this is a
2 pipe. We have it here. We have it in this courtroom. He
3 still thinks it's a pipe. Who in this case does have motive?

4 In opening statements, the defense told you that
5 this story really begins in 2018. They want you to start the
6 movie in the middle. And that's because everything that
7 happened in 2014, everything that happened in 2016, all of
8 that is the reason we're here today. The defendant was mad.
9 Now that his victims recorded him, now that they asked for
10 help when they felt their lives were in danger. And the
11 defendant, you saw, he doesn't like rats.

12 Remember Government Exhibit 12, that recording when
13 the defendant told George that he thought James was going to
14 the cops. Quote, I have him shitting in his fucking pants
15 crying. Big tough guy, crying like a girl. And the defendant
16 reminded George, "If he approaches you and says anything, just
17 don't say nothing."

18 And remember Officer Aliperti's testimony that the
19 defendant expressed resentment towards the victims. That he
20 was to give restitution payments to George. And that he felt
21 like George had told on him. And what words did he use?
22 "Rat".

23 Remember Government Exhibit 533. That text message
24 that was sent two days before his arrest when the defendant
25 said, quote, Nobody will ever tell my friends that his father

REBUTTAL SUMMATION - MS. OKEN

870

1 is a rat. And remember Government Exhibit 528, that text
2 message sent in August of 2021, seven years after the
3 defendant was arrested, five years after the last time he came
4 face to face with George. And the very same summer he was
5 tormenting E&J Boutique.

6 The defendant is still talking about George
7 Harrison. Still talking about, quote, the other piece of shit
8 who the defendant needs around. He still feels wronged
9 because they brought him to justice once before. Who in this
10 case has motive?

11 Ask yourselves, does all of this evidence just
12 coincidentally look bad for the defendant? Is there a
13 conspiracy orchestrated by victims --

14 MS. HIROZAWA: Objection.

15 THE COURT: Sustained.

16 MS. OKEN: Ask yourself is the answer to your
17 questions the most obvious one, the one that all of the
18 evidence points to. The defendant was mad. Mad at George.
19 Mad at James. And he took that anger out on their family.

20 Ladies and gentlemen, the answer is the one
21 compelled by all of the evidence in this case. The defendant
22 is guilty.

23 THE COURT: Thank you, Ms. Oken.

24 Ladies and gentlemen, we ask you to remain in the
25 jury box, we'll talk to counsel at the sidebar.

REBUTTAL SUMMATION - MS. OKEN

871

1 (Continued on the next page.)

2 (Sidebar conference.)

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SIDEBAR CONFERENCE

872

1 (The following occurred at sidebar.)

2 THE COURT: My best guess is that it's about an hour
3 to read the charge. It's not a lot of pages. It's not
4 lengthy. So that would probably put us around 6 p.m. So
5 maybe if we read the charge to 6 p.m., and I give them the
6 case to deliberate tomorrow morning.

7 Everybody agree?

8 MS. OKEN: Yes.

9 MS. McGRATH: Yes, for the government.

10 THE COURT: Okay.

11 Before we do that, should we take a five-minute
12 break?

13 MS. HIROZAWA: Yes.

14 MS. SHERMAN: Yes. Yes, I don't think they'll be
15 able to maintain full attention.

16 THE COURT: Yes, yes.

17 (End of sidebar conference.)

18 (Continued on the next page.)

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PROCEEDINGS

873

1 (In open court; Jury present.)

2 THE COURT: All right, ladies and gentlemen, we are
3 almost ready for the next building block, but in consultation
4 with counsel, we think a ten-minute break will probably be
5 beneficial for all. So we will take that break.

6 Again, the case is not over. So continue to follow
7 the instructions, which is to continue to keep an open mind.
8 Don't discuss the case amongst yourselves, or with anyone else
9 you may run into in the hall.

10 (Jury exits the courtroom.)

11 THE COURT: All right, ten minutes, and we'll
12 resume.

13 MS. OKEN: Thank you, Your Honor.

14 (A recess was taken at 4:50 p.m.)

15 THE COURTROOM DEPUTY: All rise.

16 (Defendant enters the courtroom.)

17 THE COURTROOM DEPUTY: Counsel both sides are
18 present, including the defendant.

19 THE COURT: All right, do we have anything to attend
20 to before we bring the jury back?

21 MS. OKEN: No, Your Honor.

22 MS. HIROZAWA: Very briefly, Your Honor, from the
23 defense.

24 We'd like to request a curative instruction.

25 Ms. Oken made multiple references to a conspiracy theory.

PROCEEDINGS

874

1 THE COURT: You want me to give them a multiple same
2 curative instruction?

3 MS. HIROZAWA: Oh, I'm sorry, I was just repeating
4 for the court reporter.

5 THE COURT: Oh, okay. Yes.

6 MS. HIROZAWA: And so we objected, the Court
7 sustained some of those objections.

8 THE COURT: Then I told them that there was no claim
9 by the defense that there was a conspiracy.

10 MS. HIROZAWA: That's fine, Your Honor.

11 THE COURT: I don't know what you call that, but I
12 did instruct them that way.

13 MS. HIROZAWA: Thank you, Your Honor.

14 THE COURT: Other than that, we're ready?

15 MS. HIROZAWA: Yes.

16 (Pause in the proceedings.)

17 (Jury enters the courtroom.)

18 THE COURT: Be seated.

19 Counsel will stipulate that the jury is present and
20 properly seated.

21 MS. OKEN: We do, Your Honor.

22 MS. HIROZAWA: So stipulated.

23 THE COURT: Thank you, counsel.

24 Ladies and gentlemen of the jury, we are ready to
25 move on to the next of the building blocks, and you will

JURY CHARGE

875

1 recall from Scott's presentation at the very beginning of the
2 trial, the next building block is the formal instructions on
3 the law from the Court.

4 It's commonly referred to as the Court's charge to
5 the jury. Tells you what the law is that you will apply to
6 the facts as you find them.

7 The clerk will mark the charge as Court's Exhibit 2
8 and the verdict sheet as Court's Exhibit 2A.

9 (Court Exhibits 2 and 2A, were received in
10 evidence.)

11 THE COURT: And I will ask my law clerk, Scott, to
12 read my final instructions to you.

13 THE LAW CLERK: Members of the jury, now that the
14 evidence in this case has been presented, and the attorneys
15 for the government and the defendant have the concluded their
16 closing arguments, it is my responsibility to instruct you as
17 to the law that governs this case. Before I do so, I want to
18 thank you for your patience and cooperation.

19 My instructions will be in three parts:

20 First, I will instruct you regarding the general
21 rules that define and govern the duties of a jury in a
22 criminal case.

23 Second, I will instruct you as to the legal elements
24 of the crime charged in the indictment; that is, the specific
25 elements that the government must prove beyond a reasonable

JURY CHARGE

876

1 doubt to warrant a finding of guilt.

2 And third, I will give you some general rules
3 regarding your deliberations.

4 By way of a refresher, you have now heard all the
5 evidence in the case, as well as the final arguments of the
6 lawyers for the parties.

7 It is your duty to find the facts from all the
8 evidence in this case. You are the sole judges of the facts,
9 and it is, therefore, for you and you alone to pass upon the
10 weight of the evidence, to resolve such conflicts as may have
11 appeared in the evidence, and to draw such inferences as you
12 deem to be reasonable and warranted from the evidence or lack
13 of evidence in this case.

14 With respect to any question concerning the facts,
15 it is your recollection of the evidence that controls.

16 To the facts as you find them, you must apply the
17 law in accordance with my instructions. While the lawyers may
18 have commented on some of these legal rules, you must be
19 guided only by what I instruct you about them. You must
20 follow all the rules as I explain them to you. You may not
21 follow some and ignore others; even if you disagree with or do
22 not understand the reasons for some of the rules, you are
23 bound to follow them.

24 I express no view whether the defendant is guilty or
25 not guilty or as to any fact. You should not draw any

JURY CHARGE

877

1 inference or reach any conclusion as to whether the defendant
2 is guilty or not guilty from anything I may have said or done.
3 You will decide the case solely on the facts you find and the
4 law as I give to you.

5 In reaching your verdict, you are to perform the
6 duty of finding the facts without bias or prejudice as to any
7 party. You must remember that all parties stand equal before
8 a jury in the courts of the United States. The fact that the
9 government is a party and the prosecution is brought in the
10 name of the United States does not entitle the government or
11 its witnesses to any greater consideration than that afforded
12 to any defendant. By the same token, you must give it no less
13 consideration. Your verdict must be based solely on the
14 evidence or lack of evidence.

15 For the same reasons, the personalities and the
16 conduct of counsel are not in any way in issue. If you formed
17 reactions of any kind to any of the lawyers in this case,
18 favorable or unfavorable, whether you approve or disprove of
19 their behavior, those reactions must not enter into your
20 deliberations.

21 During the course of the trial, I may have
22 admonished an attorney. You should draw no inference against
23 the attorney or the client. It is the duty of the attorneys
24 to offer evidence and press objections on behalf of their
25 side. It is my function to cut off counsel from an improper

JURY CHARGE

878

1 line of argument or question, and to strike answers when I
2 think it is necessary. But you should draw no inference of
3 from that.

4 The indictment that was filed against the defendant
5 is the means by which the government gives him notices of the
6 charges against him and brings him before the court. The
7 indictment is an accusation and nothing more. The indictment
8 is not evidence, and you are to give it no weight in arriving
9 at your verdict.

10 The defendant, in response to the indictment,
11 pleaded not guilty. The defendant is presumed to be innocent
12 unless his guilt has been proven beyond a reasonable doubt,
13 and that presumption alone, unless overcome, is sufficient to
14 acquit him. The defendant is on trial for the crime charged
15 against him in the indictment and not for anything else.

16 The government has the burden; that is, the
17 obligation of proving guilt beyond a reasonable doubt. This
18 burden never shifts to the defendant. The defendant does not
19 have to prove his innocence; he need not submit any evidence
20 at all. And even if the defendant had submitted evidence, as
21 he did during this trial, the burden of proof never shifts to
22 the defendant. It always stays with the government.

23 Since, in order to convict the defendant of a given
24 charge, the government is required to prove that charge beyond
25 a reasonable doubt. The question then is: What is reasonable

JURY CHARGE

879

1 doubt?

2 The words almost define themselves. It is a doubt
3 based upon reason. It is a doubt that a reasonable person has
4 after carefully weighing all the evidence or lack of evidence.
5 It is a doubt that would cause a reasonable person to hesitate
6 to act in a matter of importance in his or her personal life.
7 Proof beyond a reasonable doubt must, therefore be proof of a
8 convincing character that a reasonable person would not
9 hesitate to rely upon in making an informed decision.

10 A reasonable doubt is not caprice or whim. It is
11 not speculation or suspicion. It is not an excuse to avoid
12 the performance of an unpleasant duty. The law does not
13 require that the government prove guilt beyond all possible
14 doubt: Proof beyond a reasonable doubt is sufficient to
15 convict. But bear in mind that a criminal case is different
16 from a civil case.

17 If, after fair and impartial consideration of the
18 evidence, you have a reasonable doubt as to the defendant's
19 guilt with respect to a particular charge against him, you
20 must find the defendant not guilty of that charge. On the
21 other hand, if after fair and impartial consideration of all
22 the evidence, you are satisfied beyond a reasonable doubt of
23 the defendant's guilt with respect to a particular charge
24 against him, you should find the defendant guilty of that
25 charge.

JURY CHARGE

880

1 Although the First Amendment protects the freedom of
2 speech, its protections are not absolute and do not extend to
3 certain categories of speech. The First Amendment permits the
4 government to protect a witness from retaliation where the
5 government proves beyond a reasonable doubt the speaker's
6 intent to retaliate, and that the speech was an integral part
7 of that retaliation. On the other hand, if you find that the
8 speech was not integral to any alleged retaliation or was not
9 expressed with the required bad intent to retaliate, it
10 remains First Amendment protected speech, which cannot be the
11 basis of a crime.

12 I wish to expand now on the instructions I gave you
13 at the beginning of the trial as to what is evidence and how
14 you should consider it. Evidence comes in several forms
15 including:

16 A. Sworn testimony of witnesses, both on direct and
17 cross-examination, and regardless of who called the witness:

18 B. Exhibits that have been received in evidence by
19 the court; and

20 C. Facts to which all the lawyers have agreed or
21 stipulated.

22 The parties have stipulated to certain facts in this
23 case. Such a stipulation is an agreement among the parties
24 that a certain fact is true. You must consider such
25 stipulated facts as true.

JURY CHARGE

881

1 As I said at the beginning of the trial, certain
2 things are not evidence and are to be disregarded by you in
3 deciding what the facts are. They are as follows:

4 First, arguments or statements by lawyers are not
5 evidence.

6 Questions put -- questions put to the witnesses are
7 not evidence. It is the question combined with the answer
8 that is evidence.

9 In addition to the lawyers' questions, I
10 occasionally may have asked questions for purposes of
11 clarification. Please do not assume that the questions are
12 evidence or that I hold any opinion on matters to which any
13 questions may have related. I do not. Those questions were
14 asked solely in an effort or attempt to make something
15 clearer.

16 Similarly, objections to questions or to offered
17 exhibits are not evidence. In this regard, attorneys have a
18 duty to their clients to object when they believe evidence
19 should not be received. You should not be influenced by the
20 objection or by the Court's ruling on them. If the objection
21 was sustained, ignore the question. If the objection was
22 overruled, treat that answer like any other answer.

23 Of course, testimony that has been stricken or that
24 you have been instructed to disregard is not evidence and must
25 be disregarded.

JURY CHARGE

882

1 Equally obvious, anything you may have seen or heard
2 outside the courtroom is not evidence.

3 Finally, it would be improper for you to consider,
4 in reaching your decision as to whether the government
5 sustained its burden of proof any personal feelings you may
6 have about the defendant's race, religion, national origin,
7 ethnic background, sex, gender orientation, or age. All
8 persons are entitled to the presumption of innocence, and the
9 government has the same burden of proof. In addition, it
10 would be equally improper for you to allow any feelings you
11 might have about the government of the United States or the
12 nature of the crime charged to interfere with your
13 decision-making process.

14 To repeat, your verdict must be based exclusively
15 upon the evidence or the lack of evidence in this case.

16 The government has offered evidence in the form of
17 recordings of telephone calls. These telephone calls were
18 lawfully recorded.

19 When the recordings were played, I advised you to
20 listen very carefully to the recordings themselves. You
21 should make your only interpretation of what appears on the
22 recording based on what you heard. If you think you heard
23 something differently than the way it appeared on the
24 transcript, what you heard is controlling. You, the jury, are
25 the sole judges of the facts.

JURY CHARGE

883

1 I told you that evidence comes in various forms such
2 as the sworn testimony of witnesses, exhibits and
3 stipulations.

4 There are, in addition, two different kinds of
5 evidence, direct and circumstantial.

6 Direct evidence is the communication of a fact by a
7 witness who testified to the knowledge of that fact as having
8 been obtained through one of the five senses. So, for
9 example, a witness who testified to knowledge of a fact
10 because he or she saw it, heard it, smelled it, tasted it or
11 touched it, is giving evidence which is direct. What remains
12 is your responsibility to pass upon the credibility of the
13 testimony that witness gave.

14 Circumstantial evidence is evidence which tends to
15 prove a fact in issue by a proof of other facts from which the
16 fact and issue may be inferred. The word "infer," or the
17 expression "to draw an inference," means to find that a fact
18 exists from proof of another fact. For example, if a fact in
19 issue is whether it is raining at the moment, none of us can
20 testify directly to that fact sitting as we are in what is
21 essentially a windowless courtroom. Assume, however, that as
22 we are sitting here, a person walks into the courtroom wearing
23 a raincoat that is dripping wet and carrying an umbrella that
24 was dripping water. We may infer from those facts that it is
25 raining outside. In other words, the fact of rain is an

JURY CHARGE

884

1 inference that could be drawn from the wet raincoat and the
2 dripping umbrella.

3 However, from the direct evidence of your
4 observation of a person entering the courtroom wearing a wet
5 raincoat and carrying a wet umbrella, alone you could not
6 infer exactly when the rain had started or for how long it had
7 rained.

8 An inference is to be drawn only if it is logical
9 and reasonable to do so. In deciding whether to draw an
10 inference, you must look at and consider all the facts in the
11 light of reason, common sense, and experience. Whether a
12 given inference is or is not to be drawn is entirely a matter
13 for you, the jury, to decide. Please bear in mind, however,
14 that an inference is not to be drawn by guesswork or
15 speculation.

16 I remind you once again that you may not convict the
17 defendant unless you are satisfied of his guilt beyond a
18 reasonable doubt, whether based on direct evidence,
19 circumstantial evidence, or the logical inferences to be drawn
20 from such evidence.

21 Circumstantial evidence does not necessarily prove
22 less than direct evidence, nor does it necessarily prove more.
23 You are to consider all the evidence in this case, direct and
24 circumstantial, in determining what the facts are and in
25 arriving at your verdict.

JURY CHARGE

885

1 I will now instruct you further about inferences.
2 During the trial, you may have heard the attorneys use the
3 term "inference," and in their arguments they may have asked
4 you to infer, on the basis of your reason, experience and
5 common sense, from one or more prudent facts, the existence of
6 some other facts.

7 An inference is not is a suspicion or a guess. It
8 is a logical conclusion that a disputed fact exists that we
9 reach in light of another fact, which has been shown to exist.
10 There are times when different inferences may be drawn from
11 facts, whether proved by direct or circumstantial evidence.
12 It for you, and you alone, to decide what inferences you will
13 draw.

14 Keep in mind that the mere existence of an inference
15 against the defendant does not relieve the government of the
16 burden of establishing its case beyond a reasonable doubt.

17 The fact that one side or the other called more
18 witnesses or introduced more evidence does not mean that you
19 should find the facts in favor of the side who called more
20 witnesses. You must not permit the number of witnesses or
21 documents supplied or the amount of time taken in examining a
22 witness to overwhelm your judgment. The weight of the
23 evidence is by no means determined by the number of witnesses
24 or the length of their testimony or the quantity of documents.
25 You must keep in mind that the burden of proof is always on

JURY CHARGE

886

1 the government and the defendant is not required to call any
2 witness or offer any evidence because the defendant presume to
3 be innocent.

4 By the same token, you do not have to accept the
5 testimony of any witness who has not been contradicted or
6 impeached if you find the witness not to be credible. You
7 also have to decide which witnesses to believe and which facts
8 are true. To do this, you must look at all the evidence,
9 drawing upon your own common sense and personal experience.
10 But, again, you must keep in mind that the burden of proof is
11 always on the government and the defendant is not required to
12 call any witnesses or offer any evidence because he is
13 presumed to be innocent.

14 The law does not require any party to call as
15 witnesses all persons who may have had been present at any
16 time or place involved in the case or who may appear to have
17 some of the matter at issue in this trial. Nor does the law
18 require any party to produce as exhibits all papers and things
19 mentioned during the course of the trial. And, of course, the
20 defendant in a criminal case is not required to call any
21 witnesses or produce any evidence at all.

22 During the course of the trial, you heard testimony
23 that attorneys interviewed witnesses when preparing for and
24 during the trial. You must not draw any unfavorable inference
25 from that fact.

JURY CHARGE

887

1 On the contrary, attorneys are obliged to prepare
2 their case as thoroughly as possible, and in the discharge of
3 that responsibility, properly interview witnesses in
4 preparation for the trial and from time to time as may be
5 required during the course of trial.

6 During the trial, you have heard argument by counsel
7 that the government did not utilize specific investigative
8 techniques or exhaustively pursue every piece of information.
9 You may consider these facts in deciding whether the
10 government has met its burden of proof, because, as I told
11 you, you should look at all of the evidence or lack of
12 evidence in deciding whether the government has proven a
13 particular charge beyond a reasonable doubt.

14 However, you are also instructed that there is no
15 legal requirement that the government use any specific
16 investigative techniques or pursue every investigative lead to
17 prove its case. Law enforcement techniques are not your
18 concern. Your concern is to determine whether or not, based
19 upon all the evidence presented in the case, the government
20 has proven that the defendant is guilty beyond a reasonable
21 doubt.

22 In deciding what the facts are, you must decide
23 which testimony to believe and which testimony not to believe.
24 In making that decision, you should use the same reason you
25 would employ in making determinations important in your own

JURY CHARGE

888

1 affairs that are based on information given to you by others.

2 There are a number of factors you may take into
3 account in determining whether the testimony of a witness is
4 believable, including the following:

5 1, did the witness impress you as honest?

6 2, did the witness have any particular reason not to
7 tell the truth?

8 3, did the witness have a personal interest in the
9 outcome of the case?

10 4, did the witness seem to have a good memory?

11 5, did the witness have the opportunity and ability
12 to observe accurately the things they testified about?

13 6, did the witness appear to understand the
14 questions clearly and answer them directly?

15 7, did the witness' testimony differ from the
16 testimony of other witnesses?

17 People sometimes forget things. A contradiction may
18 be an innocent lapse of member or it may be an intentional
19 falsehood. Consider, therefore, whether the contradiction, if
20 there was one, has to do with an important fact or only a
21 small detail.

22 Different people observing an event may remember it
23 differently and, therefore, testify about it differently.

24 But, if any witness is shown to have willfully lied
25 about any material matter, you have the right to conclude that

JURY CHARGE

889

1 the witness also lied about other matters. You may either
2 disregard all of that witness' testimony, or you may accept
3 whatever part of it you think deserves to be believed.

4 You may consider the factors I have just discussed
5 with you in deciding how much weight to give to testimony.

6

7 (Continued on the following page.)

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JURY CHARGE

890

1 THE CLERK: (Cont'g.) In evaluating the credibility
2 of witnesses, you should take into account any evidence that a
3 witness who testified may benefit in some way from the outcome
4 of this case. Such an interest in the outcome creates a
5 motive to testify falsely and may sway the witness to testify
6 in a way that advances his or her own interests. Therefore,
7 if you find that any witness whose testimony you are
8 considering may have an interest in the outcome of this trial,
9 then you should bear that factor in mind when evaluating the
10 credibility of his or her testimony and accept it with great
11 care.

12 This is not to suggest that every witness who has an
13 interest in the outcome of a case will testify falsely. It is
14 for you to decide to what extent, if at all, a witness's
15 interest has affected or colored his or her testimony.

16 The defendant did not testify in this case. Under
17 our constitution, he has no obligation to testify or to
18 present any other evidence because it is the prosecution's
19 burden to prove the defendant guilty beyond a reasonable
20 doubt. That burden remains with the prosecution throughout
21 the entire trial and never shifts to the defendant. A
22 defendant is never required to prove that he is innocent.

23 You may not attach any significance to the fact that
24 the defendant did not testify. No adverse inference against
25 him may be drawn by you because he did not take the witness

JURY CHARGE

891

1 stand. You may not consider this against the defendant in any
2 way in your deliberations in the jury room.

3

4 In this case, i have permitted Special Agent Richard
5 Busick to testify as an expert witness and to express opinions
6 about certain matters that are in issue. A witness may be
7 permitted to testify to an opinion on those matters about
8 which he or she has special knowledge, skill, experience and
9 training. Such testimony is presented to you on the theory
10 that someone who is experienced and knowledgeable in the field
11 can assist you in understanding the evidence or in reaching an
12 independent decision on the facts.

13 In weighing this opinion testimony, you may consider
14 the witness's qualifications, opinions, the reasons for
15 testifying, as well as all of the other considerations that
16 ordinarily apply when you are deciding whether or not to
17 believe a witness's testimony. You may give the opinion
18 whatever weight, if any, you find it deserves in light of all
19 the evidence in this case. You should not, however, accept
20 opinion testimony merely because I allowed the witness to
21 testify concerning that opinion. Nor should you substitute it
22 for your own reason, judgment, and common sense. The
23 determination of the facts in this case rests solely with you.

24 Among the exhibits in this case were photographs,
25 diagrams, and maps received in evidence to assist you in

JURY CHARGE

892

1 evaluating the testimony relating to the locations, scenes, or
2 objects depicted therein. You are the sole judges of the
3 accuracy of the photographs, diagrams, and maps and you are
4 the sole judges of the weight to be given to them. You may
5 consider the factors i have just discussed with you in
6 deciding how much weight to give to the evidence presented.

7 During this trial, you have heard the testimony of
8 active or retired law enforcement employees. The fact that a
9 witness is a law enforcement employee does not mean that his
10 or her testimony is entitled to any greater weight. By the
11 same token, the testimony of such a witness is not entitled to
12 less consideration for that reason. At the same time, it is
13 quite legitimate for defense counsel to try to attack the
14 credibility of a law enforcement witness on the grounds that
15 his or her testimony may be colored by a personal or
16 professional interest in the outcome of the case.

17 You should consider the testimony of a law
18 enforcement employee just as you would any other evidence in
19 the case and evaluate his or her credibility just as you would
20 that of any other witness. After reviewing all the evidence,
21 you will decide whether to accept the testimony of a law
22 enforcement employee and what weight, if any, that testimony
23 deserves.

24 You have heard evidence, including audio recordings,
25 showing that the defendant previously engaged in conduct,

JURY CHARGE

893

1 including other crimes, other than the crime charged in the
2 indictment. The defendant is not on trial for committing any
3 acts not charged in the indictment or for acts for which he
4 was previously convicted. Consequently, you may not consider
5 the evidence of these other acts as a substitute for evidence
6 that the defendant committed the crime charged in this case.
7 For example, you may not consider the evidence of these acts
8 as threats or harmful action that the Government must prove to
9 you in this case. Nor may you consider evidence of those
10 other acts as proof that the defendant has a criminal
11 propensity; that is, you may not conclude that he likely
12 committed this crime because he committed a crime in the past.

13 Instead, you may consider that evidence for limited
14 purposes, and you may consider it only for the following
15 limited purposes, which i will now describe. You may only
16 consider evidence of uncharged conduct:

17 (A) .

18 As evidence that John Doe number one or John Doe
19 number two provided information to a law enforcement officer
20 relating to the commission or possible commission of any
21 federal offense;

22 (B) .

23 As evidence that John Doe number one or John Doe
24 number two provided truthful information to a law enforcement
25 officer relating to the commission or possible commission of

JURY CHARGE

894

1 any federal offense;

2 (C).

3 As evidence enabling you to understand the complete
4 story of the charged crime; or

5 Whether the defendant had a motive to commit the
6 acts charged in the 2022 indictment.

7 You have heard evidence that a witness made a
8 statement on an earlier occasion, which counsel argues is
9 inconsistent with the witness's trial testimony. Evidence of
10 what is arguably a prior inconsistent statement was placed
11 before you for the limited purpose of helping you decide
12 whether to believe the trial testimony of the witness, who
13 contradicted himself or herself. If you find that the witness
14 made an earlier statement that conflicts with his or her trial
15 testimony, you may consider that fact in deciding how much of
16 his or her trial testimony, if any, to believe.

17 In making this determination, you may consider
18 whether the witness purposely made a false statement or
19 whether it was an innocent mistake; whether the inconsistency
20 concerned an important fact, or whether it had to do with a
21 small detail; whether the witness had an explanation for the
22 inconsistency, and whether that explanation appealed to your
23 common sense.

24 It is exclusively your duty, based upon all the
25 evidence and your own good judgment, to determine whether the

JURY CHARGE

895

1 prior statement was inconsistent. And, if so, how much
2 weight, if any, should be given to the inconsistent statement
3 in determining whether to believe all, part, or none of the
4 witness's testimony.

5 I will now turn to the second part of this charge
6 and will, as I indicated at the outset, instruct you as to the
7 specific elements of the crime charged that the Government
8 must prove beyond a reasonable doubt to warrant a finding of
9 guilt in this case.

10 The defendant is formally charged in an indictment.
11 As i instructed you at the beginning of this case, an
12 indictment is a charge or accusation. The indictment in this
13 case contains one count.

14 To repeat, an indictment is merely an accusation in writing.
15 It is not evidence of guilt. It is entitled to no weight in
16 your determination of the facts. The defendant has pleaded
17 not guilty, thereby placing in issue each allegation in the
18 indictment.

19 The count charged in this indictment is witness
20 retaliation.

21 The indictment accuses the defendant of violating
22 the same statute in more than one way. In other words, the
23 indictment alleges that the statute in question was violated
24 by various acts which are in the indictment joined by the
25 conjunctive word "and," while the statute and the elements of

JURY CHARGE

896

1 the offense are stated in the disjunctive, using the word
2 "or." in these instances, it is sufficient for a finding of
3 guilt if the evidence established beyond a reasonable doubt
4 the violation of the statute by any one of the acts charged.

5 During these instructions on the elements of the
6 crime charged, you will hear me use the words "knowingly," and
7 "intentionally" from time to time. Before you can find the
8 defendant guilty, you must be satisfied that the defendant was
9 acting knowingly and intentionally.

10 A person acts knowingly, if he or she acts
11 intentionally and voluntarily and not because of ignorance,
12 mistake, accident, or carelessness. Whether the defendant
13 acted knowingly may be proven by her conduct and by all of the
14 facts and circumstances surrounding the case.

15 A person acts intentionally, if he or she
16 acts deliberately and purposefully. That is, the acts must
17 have been the product of his or her conscious, objective
18 decision rather than the product of a mistake or accident.

19 These issues of knowledge and intent require you to
20 make a determination about the defendant's state of mind,
21 something that can rarely be proven directly. A wise and
22 careful consideration of all the circumstances before you may,
23 however, permit you to make a determination as to the
24 defendant's state of mind. Indeed, in your everyday affairs,
25 you are frequently called upon to determine a person's state

JURY CHARGE

897

1 of mind from his or her words and actions. The indictment
2 charges on or about certain dates. It does not matter if the
3 indictment charges that a specific act occurred on or about a
4 certain date and the evidence indicates that in fact it was on
5 other another date. The law only requires substantial
6 similarity between the dates alleged in the indictment and the
7 date established by testimony or exhibits.

8 I will now address the count charged in the
9 indictment.

10 The defendant is charged with retaliating against
11 George Harrison and James Harrison, respectively identified in
12 the indictment as John Doe number one and John Doe number two,
13 including by threatening their family members Jessica Jessie
14 Harrison and Andrew Harrison, respectively identified in the
15 indictment as victim one and victim two.

16 The indictment reads:

17 In or about and between June 2018 and September
18 2021, both dates being approximate and inclusive, within the
19 Eastern District of New York and elsewhere, the defendant
20 Chris Bantis did knowingly and intentionally:

21 (1).

22 Engage in conduct and thereby threaten to cause
23 bodily injury to one or more other persons, to wit: Victim
24 one and victim two, individuals whose identities are known to
25 the grand jury, and to damage the tangible property of victim

JURY CHARGE

898

1 one, with intent to retaliate against John Doe number one and
2 John Doe number two, individuals whose identities are known to
3 the grand jury for;

4 (A) information relating to the commission and
5 possible commission of a federal offense and the commission
6 and possible commission of a violation of conditions of
7 supervised release given by one or more persons, to wit: John
8 Doe number one and John Doe number two, to one or more law
9 enforcement officers;

10 And (B) the attendance of John Doe number one at an
11 official proceeding and his testimony in an official
12 proceeding, to wit: A federal sentencing proceeding in the
13 Eastern District of New York;

14 And (2) with intent to retaliate, take one or more
15 actions harmful to John Doe number one and John Doe number two
16 for providing to one or more law enforcement officers truthful
17 information relating to the commission and possible commission
18 of a federal offense.

19 The indictment charges that the defendant acted with
20 intent to retaliate against John Doe number one and John Doe
21 number two. As I previously instructed you, however, the
22 Government need only prove beyond a reasonable doubt that the
23 defendant acted with intent to retaliate against either George
24 Harrison or James Harrison, or both. To find the defendant
25 guilty, you must agree unanimously on which witness the

JURY CHARGE

899

1 defendant intended to retaliate against.

2 Similarly, although the indictment charges that the
3 defendant intentionally threatened bodily injury to victim one
4 and victim two and intentionally threatened to damage the
5 property of victim one, the Government must prove that the
6 defendant intentionally made one or more of those threats.
7 Once again, you must agree unanimously as to which victim the
8 defendant intended to threaten.

9 There are three statutes relevant to this charge:
10 18 U.S.C. § 1513(B) (1), 18 U.S.C. § 1513(B) (2), and 18 U.S.C.
11 § 1513(E).

12 § 1513(B) (1) provides:

13 Whoever knowingly engages in any conduct and thereby
14 causes bodily injury to another person or damages the tangible
15 property of another person, or threatens to do so, with intent
16 to retaliate against any person for the attendance of a
17 witness or party at an official proceeding, or any testimony
18 given or any record, document, or other
19 object produced by a witness in an official proceeding shall
20 be guilty of a crime.

21 § 1513(B) (2) provides:

22 Whoever knowingly engages in any conduct and thereby
23 causes bodily injury to another person or damages the tangible
24 property of another person, or threatens to do so, with intent
25 to retaliate against any person for any information relating

JURY CHARGE

900

1 to the commission or possible commission of a federal offense
2 or a violation of conditions of probation, supervised release,
3 parole, or release pending judicial proceedings given by a
4 person to a law enforcement officer shall be guilty of a
5 crime.

6 Lastly, § 1513(E) provides:

7 Whoever knowingly, with the intent to retaliate,
8 takes any action harmful to any person, including interference
9 with the lawful employment or livelihood of any person, for
10 providing to a law enforcement officer any truthful
11 information relating to the commission or possible commission
12 of any federal offense, shall be guilty of a crime.

13 Different elements are required to prove a crime
14 under each of these statutes, which i will explain to you in
15 turn. Each of these three statutes is charged as an
16 alternative basis on which you can find the defendant guilty
17 of the crime charged. That means that the Government must
18 prove, beyond a reasonable doubt, all of the elements of at
19 least one of these statutes.

20 In order to prove the defendant guilty under §
21 1513(b) (1), the Government must prove each of the following
22 elements beyond a reasonable doubt:

23 First, that the defendant knowingly engaged in
24 conduct;

25 Second, that by such conduct, the defendant

JURY CHARGE

901

1 threatened to cause bodily injury to a victim or to cause
2 damage to a victim's property, and;

3 Third, the defendant acted with the intent to
4 retaliate against a witness for his attendance or testimony at
5 an official proceeding.

6 Element one: Knowingly engaging in conduct.

7 The first element the Government must prove beyond a
8 reasonable doubt is that the defendant acted knowingly. An
9 act is done knowingly if it is done voluntarily and purposely
10 and not by accident or mistake.

11 Element two: Threatening bodily injury or property
12 damage.

13 The second element the Government must prove beyond
14 a reasonable doubt is that the defendant's conduct threatened
15 to cause bodily injury to Jessie Harrison or Andrew Harrison,
16 or to cause damage to the property of Jessie Harrison.

17 Bodily injury means a cut, abrasion, bruise, burn or
18 disfigurement, physical pain, illness or the impairment of the
19 function of a bodily member, organ or mental facility. It
20 includes any injury to the body no matter how temporary.

21 It is not necessary to prove that Jessie Harrison or
22 Andrew Harrison actually was injured or that Jessie Harrison's
23 property was actually damaged; it is sufficient if the
24 defendant knowingly threatened to cause such bodily injury or
25 property damage.

JURY CHARGE

902

1 A threat is simply the expression of intention to do
2 harm. A threat may be communicated by words as well as
3 gestures. In order to find that the defendant threatened to
4 cause Jessie Harrison or Andrew Harrison bodily harm, you need
5 not find that he intended to carry out the threat.

6 Element three: Intent to retaliate

7 The third element the Government must prove beyond a
8 reasonable doubt is that the defendant acted with the intent
9 to retaliate against George Harrison for his attendance or
10 testimony at an official proceeding.

11 An official proceeding means a proceeding before a
12 court, judge or federal agency. The proceeding may be civil
13 or criminal. You are instructed that a federal sentencing
14 proceeding is an official proceeding. You are instructed that
15 a federal sentencing proceeding is an official proceeding. In
16 order to satisfy this element, it is not necessary for the
17 Government to prove that the defendant knew he was breaking
18 any particular law.

19 In order to prove the defendant guilty under section
20 1513(b) (2), the Government must prove each of the following
21 elements beyond a reasonable doubt:

22 First, that the defendant knowingly engaged in conduct;
23 threatened to cause bodily injury to a victim or to cause
24 damage to a victim's property;

25 Second, that by such conduct the defendant

JURY CHARGE

903

1 threatened to cause bodily harm to a victim or to cause damage
2 to a victim's property and;

3 Third, that the defendant acted with the intent to
4 retaliate against a person for providing information to a law
5 enforcement officer relating to the commission or possible
6 commission of a federal offense or a violation of a condition
7 of supervised release.

8 Element one: Knowingly engaging in conduct

9 As in section 1513(b)(1), the first element the
10 Government must prove beyond a reasonable doubt is that the
11 defendant acted knowingly. An act is done knowingly if it is
12 done voluntarily and purposely and not by accident or mistake.

13 Element two: Threatening bodily injury or property
14 damage.

15 As in section 1513(b)(1), the second element the
16 government must prove beyond a reasonable doubt is that the
17 defendant's conduct threatened to cause bodily injury to
18 Jessie Harrison or Andrew Harrison, or to cause damage to the
19 property of Jessie Harrison.

20 Bodily injury means a cut, abrasion, bruise, burn or
21 disfigurement, physical pain, illness or the impairment of the
22 function of a bodily member, organ or mental facility. It
23 includes any injury to the body no matter how temporary. It
24 is not necessary to prove that Jessie Harrison or Andrew
25 Harrison actually was injured or that Jessie Harrison's

JURY CHARGE

904

1 property was actually damaged; it is sufficient if the
2 defendant knowingly threatened to cause such bodily injury or
3 property damage. A threat is simply the expression of
4 intention to do harm. A threat may be communicated by words
5 as well as gestures. In order to find that the defendant
6 threatened to cause Jessie Harrison or Andrew Harrison bodily
7 harm, you need not find that he intended to carry out the
8 threat.

9 Element three: Intent to retaliate.

10 The third element the Government must prove beyond a
11 reasonable doubt is that the defendant acted with the intent
12 to retaliate against George Harrison or James Harrison for
13 providing information to a law enforcement officer relating to
14 the commission or possible commission of a federal offense or
15 a violation of a condition of supervised release. This
16 includes proving that the defendant knew that George Harrison
17 or James Harrison provided such information to a law
18 enforcement officer.

19 The Government does not need to prove that the
20 federal offense for which information was provided by George
21 Harrison or James Harrison was actually committed. Rather, it
22 must prove that George Harrison or James Harrison provided
23 truthful information regarding the commission or possible
24 commission of a federal offense.

25 A law enforcement officer means an officer or

JURY CHARGE

905

1 employee of the federal government authorized to prevent,
2 investigate or prosecute offenses or serving as a probation
3 officer. You are instructed that a special agent or a task
4 force officer with the Federal Bureau of Investigation is a
5 law enforcement officer. You are also instructed that the
6 crimes of extortionate extension of credit and extortionate
7 collection of credit, in violation of 18 U.S.C. § 892(a) and
8 18 U.S.C. § 894(a), are federal offenses.

9 Supervised release is similar to parole or
10 probation. During supervised release, a defendant is
11 supervised in a non-custodial setting by a U.S. probation
12 officer, pursuant to terms imposed by the court and U.S.
13 probation. If a defendant violates a condition of supervised
14 release, he may be punished. In order to satisfy this
15 element, it is not necessary for the Government to prove that
16 the defendant knew he was breaking any particular law.

17 In order to prove the defendant guilty under §
18 1513(e), the Government must prove each of the following
19 elements beyond a reasonable doubt:

20 First, that the defendant knowingly took action;

21 Second, that the defendant's action was harmful to a
22 person and;

23 Third, that the defendant acted with intent to
24 retaliate against that person for providing truthful
25 information to law enforcement.

JURY CHARGE

906

1 Element one: Knowingly engaging in conduct.

2 As in § 1513(b) (1) and § 1513(b) (2), the first
3 element the Government must prove beyond a reasonable doubt is
4 that the defendant acted knowingly. An act is done knowingly
5 if it is done voluntarily and purposely and not by accident or
6 mistake.

7 Element two: Action harmful to a person.

8 The second element the Government must prove beyond
9 a reasonable doubt is that the defendant took one or more
10 actions that were harmful to either George Harrison or James
11 Harrison.

12 Element three: Intent to retaliate.

13 The third element the must prove beyond a reasonable
14 doubt is that, in taking action harmful to George Harrison or
15 James Harrison, the defendant intended to retaliate against
16 that person for providing truthful information to a law
17 enforcement officer relating to the commission or possible
18 commission of a federal offense. This includes proving that
19 the defendant knew that George Harrison or James Harrison
20 provided such truthful information to a law enforcement
21 officer.

22 As in § 1513(b) (2), a law enforcement officer means
23 an officer or employee of the federal government authorized to
24 prevent, investigate or prosecute offenses or serving as a
25 probation officer. You are instructed that a special agent or

JURY CHARGE

907

1 a task force officer with the Federal Bureau of Investigation
2 is a law enforcement officer. You are also instructed that
3 the crimes of extortionate extension of credit and
4 extortionate collection of credit, in violation of 18 U.S.C. §
5 892(a) and 18 U.S.C. § 894(a), are federal offenses.

6 The Government does not need to prove that the
7 federal offense for which information was provided by George
8 Harrison or James Harrison was actually committed. Rather, it
9 must prove that George Harrison or James Harrison provided
10 truthful information regarding the commission or possible
11 commission of a federal offense. In order to satisfy this
12 element, it is not necessary for the Government to prove that
13 the defendant knew he was breaking any particular law.

14 Mr. Bantis has pled not guilty and maintains that he
15 did not commit the offense charged.

16 You are about to go into the jury room, members of
17 the jury, to begin your deliberations. That brings us to the
18 third and final part of my charge which provides some general
19 rules regarding your deliberations.

20 In order that your deliberations may proceed in an
21 orderly fashion, first you should have a foreperson.
22 Traditionally, juror number one acts as foreperson. Of
23 course, his or her vote is entitled to no greater weight than
24 that of any other juror.

25 Keep in mind that nothing i have said in these

JURY CHARGE

908

1 instructions is intended to suggest to you in any way what i
2 think your verdict should be. That is entirely for you to
3 decide. By way of reminder, i charge you once again that it
4 is your responsibility to judge the facts in this case from
5 the evidence presented during the trial and to apply the law,
6 as i have given it to you, to the facts as you find them from
7 the evidence.

8 When you retire, it is your duty to discuss the case
9 for the purpose of reaching agreement if you can do so. Each
10 of you must decide the case for yourself, but should do so
11 only after considering all the evidence, listening to the
12 views of your fellow jurors, and discussing it fully. It is
13 important that you reach a verdict if you can do so
14 conscientiously. You should not hesitate to reconsider your
15 opinions from time to time and to change them if you are
16 convinced that they are wrong. However, do not surrender an
17 honest conviction as to weight and effect of the evidence
18 simply to arrive at a verdict.

19 Any verdict you reach must be unanimous. That is,
20 with respect to each count, you must all agree as to whether
21 your verdict is guilty or not guilty as to that count.

22 Deliberations are to take place only in the jury
23 room. You will not discuss this case with anyone outside the
24 jury room. And that includes your fellow jurors. You will
25 only discuss the case when all 12 deliberating jurors are

JURY CHARGE

909

1 together, in the jury room, with no one else present, behind
2 the closed door. At no other time is there to be any
3 discussion about the merits of the case. Period.

4 Finally, you cannot allow a consideration of the
5 punishment which may be imposed upon the defendant, if
6 convicted, to influence your verdict in any way or to enter
7 into your deliberations.

8 I instruct you, however, that none of the counts in
9 this case is a capital count. By that i mean that the death
10 penalty is not a possible punishment for any of the counts in
11 this case. Regardless, the duty of imposing a sentence rests
12 exclusively with me. Your duty is to weigh the evidence in
13 the case and to determine whether the Government has proven
14 every element beyond a reasonable doubt solely upon such
15 evidence and upon the law without being influenced by any
16 assumption, conjecture, sympathy, or inference not warranted
17 by the facts.

18 As i am sure you can imagine, it is very important
19 that you not communicate with anyone outside the jury room
20 about your deliberations or about anything touching this case.

21 There is only one exception to this rule. If it
22 becomes necessary during your deliberations to communicate
23 with me, you may send a note, through the marshal, signed by
24 your foreperson or by one or more members of the jury. No
25 member of the jury should ever attempt to communicate with me

JURY CHARGE

910

1 except by a signed writing, and i will never communicate with
2 any member of the jury on any subject touching the merits of
3 the case other than in writing, or orally here in open court.

4 If you send any notes to the court, do not disclose
5 anything about your deliberations. Specifically, do not
6 disclose to anyone not even to me how the jury stands,
7 numerically or otherwise, until after you have reached a
8 unanimous verdict on each count or have been discharged.

9 Keep in mind too that in deliberations, the jury's
10 recollection governs, nobody else's. Not the court's if i
11 have made reference to the testimony and not counsel's
12 recollection. It is your recollection that must govern
13 during. Your deliberations. If necessary during those
14 deliberations, you may request by jury note a reading from the
15 trial transcript that may refresh your recollection.

16 Please, as best you can, try to be as specific as
17 possible in your requests for read backs. In other words, if
18 you are interested only in a particular part of a witness's
19 testimony, please indicate that to us. It may take some time
20 for us to locate the testimony in the transcripts, so please
21 be patient. And, as a general matter, if there is ever a
22 delay in responding to a jury note, please understand there is
23 a reason for it. None of us goes anywhere. As soon as a jury
24 note is delivered to the court by the marshal, we turn our
25 attention to it immediately.

JURY CHARGE

911

1 In the same way, if you have any questions about the
2 applicable law or you want a further explanation from me, send
3 me a note. We will provide a response as soon as we can.

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5 (Continued on the following page.)

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JURY CHARGE

912

1 THE LAW CLERK: (Cont'g.) I have provided the jury
2 with a verdict sheet, which is self-explanatory. Needless to
3 say, however, if you have any questions about the verdict
4 sheet, do not hesitate to send the Court a note asking for
5 further instructions.

6 With respect to each count, you are to resolve
7 individually the issue of whether the government has
8 established beyond a reasonable doubt the essential elements
9 of the offense, as I have described them to you, that is, you
10 must all agree unanimously as to whether your verdict is
11 guilty or not guilty.

12 When you have reached a decision, have the
13 foreperson record the answers, sign the verdict form and put
14 the date on it and notify the marshal by note that you have
15 reached a verdict. Bring the completed verdict sheet with you
16 when summoned by the Court.

17 Keep in mind that you must not be influenced by
18 sympathy, prejudice, or public opinion. I remind you at the
19 outset that each of you has undertaken a solemn obligation, a
20 sworn obligation to decide this case solely on the evidence.
21 You must carefully and impartially consider the evidence,
22 follow the law as I state it, and reach a just verdict
23 regardless of the consequences.

24 As you begin your deliberations, remember your oath
25 sums up your duty and, that is, without fear or favor to any

JURY CHARGE

913

1 person or party, you will well and truly try the issues in
2 this case according to the evidence given to you in court and
3 the laws of the United States.

4 In a few minutes I'm going to excuse our alternate
5 jurors. As I told you before, your services were required as
6 a safeguard against the possibility that one of the regular
7 jurors might be unable to complete his or her service. I
8 commend the alternate jurors for their faithful attendance and
9 attention. On behalf of the court and the parties, I thank
10 you for your service.

11 Members of the jury, I ask your patience for a few
12 moments longer. It may be necessary for me to spend a few
13 moments with counsel and the reporter at the sidebar, if so, I
14 will ask you to remain patiently in the box without speaking
15 to each other and we will return in just a moment to submit
16 the case to you.

17 Thank you again for your time and attentiveness.

18 (Continued on the next page.)

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SIDEBAR CONFERENCE

914

1 (The following occurred at sidebar.)

2 THE COURT: Objections or exceptions to the charge
3 as read?

4 MS. HIROZAWA: No, your Honor, from the defense.

5 MS. OKEN: From the government we have two very
6 brief points to note which I think both were inadvertent.

7 The first is at page 64 the Dates Approximate page
8 was inadvertently spliced in the middle of the knowingly and
9 intentionally charge, and so the back half of that charge or
10 the -- not the back half but the ending portion of it says --

11 THE COURT: On a different page?

12 MS. OKEN: It followed -- it refers back to an
13 earlier portion of the instruction but because the Dates
14 Approximate was spliced in the middle, it inadvertently refers
15 back to the Dates Approximate page. So I think we would just
16 ask that those two --

17 THE COURT: We're not giving them anything yet, so
18 if we have to correct the pagination we can.

19 MS. OKEN: So the pagination is actually right, but
20 page 64, which is correctly labeled 64, was inadvertently
21 placed between pages 67 and 68 and read in that order.

22 THE COURT: All right. So what's the clarification?

23 MS. OKEN: So I think we would just ask at minimum
24 the knowingly and intentionally instruction be reread with
25 pages 66 through 68 and without 64 in the middle.

SIDEBAR CONFERENCE

915

1 THE COURT: Okay.

2 MS. OKEN: So that's the first.

3 And then the second, it looks like in this version
4 of the charge the word "truthful" was inadvertently added to
5 Section 1513(b)(2), and that should only appear in 1513(e).

6 THE COURT: Is that accurate?

7 MS. HIROZAWA: That's correct under the law. I
8 noticed during the reading that's it correct under the
9 statute.

10 MS. OKEN: And so with respect to the best way of
11 addressing it --

12 THE COURT: Give them back to Scott and he'll reread
13 those.

14 MS. OKEN: Okay.

15 MS. HIROZAWA: Your Honor, I don't know if while
16 we're here we should renew our Rule 29 motion before the case
17 is given to the jury or if you want to have --

18 THE COURT: We're not going to do it now, the case
19 is closed.

20 MS. SHERMAN: Judge, after this is read are we then
21 letting the jury go?

22 THE COURT: We're going to let them go.

23 MS. SHERMAN: Okay.

24 THE COURT: We'll give them instructions about what
25 happens, but they're not deliberating now.

SIDEBAR CONFERENCE

916

1 MS. SHERMAN: Okay.

2 MS. HIROZAWA: What time will the Court come back
3 tomorrow?

4 THE COURT: They'll come back at 10. We'll swear
5 the marshal tomorrow and separate the alternates just in case
6 something happens overnight.

7 MS. McGRATH: Your Honor, is it your intention to
8 release the alternates at this time or to have them come back
9 tomorrow as well.

10 THE COURT: Everybody is coming back tomorrow
11 because the jury hasn't been given to the marshal yet, so
12 everybody comes back. Should they come back on Monday, I
13 don't keep the alternates here, I tell them they have to
14 follow all the rules and have to be ready.

15 MS. McGRATH: Okay.

16 MS. SASSO: Your Honor, I believe there was an
17 instruction that indicated that the alternates were going to
18 be released --

19 THE COURT: Well --

20 MS. SASSO: -- so if we can make clear that they are
21 not going to be released.

22 THE COURT: Yes, don't worry.

23 MS. SASSO: Perfect. Thank you.

24 THE COURT: That's what would have happened if we
25 actually went into deliberations in night court, but we're not

SIDE BAR CONFERENCE

917

1 doing that.

2 MS. HIROZAWA: Thank you, your Honor.

3 (End of sidebar conference.)

4 (Continued on the next page.)

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PROCEEDINGS

918

1 (In open court.)

2 THE COURT: Ladies and gentlemen, there was a couple
3 of inserts that got swiped in the wrong place so we're trying
4 to decipher that and Scott will reread two very brief sections
5 as they were intended to be read, and when you get -- you will
6 be getting within the jury room a copy of what Scott read, as
7 modified by what he is now going to read, and they will have
8 page references. So Scott will give us the page reference of
9 what he's now reading and it will make up the written charge
10 that you will have available to you in the deliberation room.
11 Mr. Woods.

12 THE LAW CLERK: Page 66. During these instructions
13 on the elements of the crime charged, you will hear me use the
14 words "knowingly" and "intentionally" from time to time.
15 Before you can find the defendant guilty, you must be
16 satisfied that the defendant was acting knowingly and
17 intentionally. A person acts knowingly if he or she acts
18 intentionally and voluntarily not because of ignorance,
19 mistake, accident or carelessness. Whether the defendant
20 acted knowingly may be proven by her conduct by all the facts
21 and circumstances surrounding the case. A person acts
22 intentionally if he or she acts deliberately and purposefully,
23 that is, the acts must have been the product of his or her
24 conscious objective decision rather than the product of a
25 mistake or accident.

1 These issues of knowledge and intent require you to
2 make a determination about the defendant's state of mind,
3 something that can rarely be proven directly. A wise and
4 careful consideration of all the circumstances before you may,
5 however, permit you to make a determination as to the
6 defendant's state of mind. Indeed, in your every day affairs
7 you are frequently called upon to determine the person's state
8 of mind from his or her words and actions in given
9 circumstances. You are asked to do the same here. I will now
10 address the count charged in the indictment.

11 Page 87. The government does not need to prove that
12 the federal offense for which information was provided by
13 George Harrison or James Harrison was actually committed,
14 rather they must prove that George Harrison or James Harrison
15 provided information regarding the commission or possible
16 commission of a federal offense.

17 THE COURT: Those are the clarifications. All
18 right. Ladies and gentlemen, the plan is as follows: We're
19 not going to reinvent night court, it is too late to begin
20 deliberations, thus the charge as read basically assumes that
21 we would have gone right to the next building block, which
22 would actually be the deliberations. So, for example, at this
23 point the alternates will not be separated from the regular
24 jurors and we're going to ask all of the jurors, both regular
25 and alternate, to return to the courthouse tomorrow morning at

PROCEEDINGS

920

1 the usual time, around 9:45, we'll begin as close to 10 as we
2 can.

3 As I indicated to you yesterday, we will not be
4 working -- you will not be working on this case in the
5 afternoon so that we will wrap up our work not later than
6 1 p.m. tomorrow afternoon, so for careful planning of the
7 balance of your day you can count on not being here after
8 1 o'clock.

9 Now the last building block is actually the
10 beginning of deliberations. That's not happened yet, it will
11 not happen until tomorrow, so that means all of the rules that
12 I continue to give you each night still apply. You are still
13 to keep an open mind. You are not to discuss the case amongst
14 yourselves or with anyone else.

15 You are not to use the overnight hours to do any
16 research, either electronically or some old-fashioned, nothing
17 about anything that touches upon this case, the personalities,
18 the laws, anything you've just heard in the charge, no
19 homework. This is everything that gets done in the classroom,
20 also known as the courtroom. You are certainly not to even,
21 if you live in the neighborhood, to go by any of the streets
22 and buildings that we've heard mentioned during the course of
23 the trial.

24 Again, we also remain on radio silence. No
25 communication to anyone about the fact that you're a juror,

PROCEEDINGS

921

1 that you're coming to the courthouse in Brooklyn or anything
2 that touches on the case, the lawyers, the personalities, the
3 issues that are before the case and, lastly, again that broad
4 definition of media. To the extent there's any commentary or
5 news about this case in any form of media, whether it's
6 old-fashioned print, radio, TV or the more modern social
7 media, Facebook, all the rest of those wonderful inventions,
8 you are to totally disregard and shut it out.

9 Again, the Court encourages you to do the same with
10 respect to any legal proceeding that may be covered in that
11 broader definition of media for fear you may hear something
12 there or see something there that contradicts what you've now
13 been told is your role here.

14 So we do wish you a pleasant evening. Get some rest
15 and relax, return to the courthouse again tomorrow morning at
16 9:45 in the Central Jury Room. And that jury room that's
17 referenced in the charge refers only to the deliberation room,
18 that's here behind the courtroom and it's only when the 12
19 jurors who will be deliberating the case are present and there
20 will be a marshal outside to protect the integrity of the
21 process.

22 So again, enjoy the evening, I look forward to
23 seeing you all tomorrow and get some rest.

24 (Jury exits courtroom.)

25 THE COURT: Okay, so we'll have Scott rerun those

PROCEEDINGS

922

1 pages correctly and everybody else keep the pages that they
2 have and save a tree or two and we'll just insert it in the
3 copy, we'll mark it 2A amended. It will be the clean copy
4 that will go that to the -- another copy, a clean copy that
5 will go into the jury room tomorrow along with the verdict
6 sheet and that brings us to the next supply -- I guess I
7 finally started to chuckle, Marissa, when you read in all the
8 documents that you were reading in. There's got to be a
9 point -- here's what my normal practice is to take all of the
10 exhibits that are basically paper and photos and send them in
11 without a note. The things that you all have been showing,
12 either it's audio or things that are electronic only, they'll
13 have to request that and we'll bring them back into the
14 courtroom if they make a request for something like that kind
15 of exhibit.

16 So that you do have some work to do to make sure --
17 I know you've been on daily, so you probably have a listing of
18 all the -- I don't know if you will need the help of the
19 reporter at all with respect to today's exhibits, but it
20 behooves us all if you can have them all assembled and ready
21 to go in tomorrow at around 10.

22 MS. OKEN: We can do that, your Honor.

23 MS. HIROZAWA: Likewise, your Honor.

24 THE COURT: Sounds good. I can't think of anything
25 else. Anybody thinking for me, anything else we need to

PROCEEDINGS

923

1 attend to?

2 MS. OKEN: Nothing from the government. Thank you,
3 your Honor.

4 MS. HIROZAWA: Not from the defense, your Honor.

5 THE COURT: You are still celebrating your birthday?

6 MS. SHERMAN: I'm intending to wait until this
7 weekend, Judge.

8 THE COURT: Have a good one either way.

9 MS. SHERMAN: Thank you.

10 THE COURT: Good night, everybody. Thank you. We
11 will see you all tomorrow at 10.

12 MS. OKEN: Thank you.

13 MS. HIROZAWA: Thank you, your Honor.

14 (Whereupon, the trial adjourned at 6:30 p.m. to
15 resume Friday, November 18, 2022 at 10:00 a.m.)

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924

	INDEX	
2	WITNESS	PAGE
3	MINA SELWANES	
4	DIRECT EXAMINATION	BY MS. SHERMAN
5	CROSS-EXAMINATION	764
6	SUMMATION	BY MS. OKEN
7	SUMMATION	776
8	SUMMATION	BY MS. McGRATH
9	SUMMATION	815
10	REBUTTAL SUMMATION	BY MS. HIROZAWA
11	JURY CHARGE	839
		854
		875

E X H I B I T S

13	COURT	PAGE
14	1 and 1A	720
15	2 and 2A	875